

**S. 2636, S. 3216, S. 3222, AND S. 3300**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON INDIAN AFFAIRS**  
**UNITED STATES SENATE**  
**ONE HUNDRED FOURTEENTH CONGRESS**  
SECOND SESSION  

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SEPTEMBER 14, 2016  

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**WEDNESDAY, SEPTEMBER 14, 2016**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

The CHAIRMAN. I call this hearing to order. I appreciate all of you being here today.

Today, the Committee will examine four bills, S. 2636, the Reservation Land Consolidation Act of 2016; S. 3216, a bill to repeal the Act entitled An Act to Confer Jurisdiction on the State of Iowa Over Offenses Committed by or Against Indians on the Sac and Fox Indian Reservation"; third bill, S. 3222, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act; and then S. 3300, The Hualapai Tribe Water Rights Settlement Act of 2016.

The bill S. 2636 was introduced in March by Senator Tester. This bill would amend the Indian Reorganization Act of 1934 to require the Secretary of the Interior to automatically take on-reservation land into trust for all federally-recognized Indian Tribes provided they apply with the proper evidence of title.

Also, this bill would codify certain provisions in current regulations used by the Secretary to review trust land applications by Indian Tribes.

In a few moments I will turn to Senator Tester for his statement on this bill.

I think this bill was intended to help Tribes work through bureaucratic red tape at the Bureau of Indian Affairs. I am concerned that in some ways there may be some harm involved. A mandatory process for on-reservation trust land acquisitions could in fact inhibit a Tribe's ability to consolidate lands and could create significant litigation.

By eliminating the notice to other governments, including Indian Tribes, there is the potential to pit Tribe against Tribe in situations where lands are contested. For example, in my home State of Wyoming, this bill could have a detrimental impact on the Wind River Indian Reservation where two Tribes share a land base.

The bill also has the potential to undermine collaboration between Tribes and the surrounding communities, who can be important partners for economic development.

The land into the trust process certainly need improvement, and we have worked to that end during this and several previous Congresses. As we have heard in hearings and roundtables, this improvement requires changes that enhance transparency and promote cooperation, so I hope to hear from the witnesses today on how we can achieve that and continue working with Senator Tester to find solutions that are beneficial to tribal communities.

The next bill, S. 3216, was introduced in July by Senator Grassley. Senator Ernst and Senator Leahy are co-sponsors.

In 1948 Congress enacted a law conferring criminal jurisdiction on the State of Iowa over misdemeanor and non-major offenses committed by or against Indians on the Sac and Fox Indian Reservation. This 1948 Act did not strip the Sac and Fox Tribe of jurisdiction over the same types of offenses. For major crimes, the Federal Government retained criminal jurisdiction on the Sac and Fox Indian Reservation.

The Sac and Fox Tribe now seeks to repeal the 1948 Act. Senator Grassley's bill would do just that.

On April 8th, the State of Iowa passed legislation tendering all relevant criminal jurisdiction held by the State to the United States so that it may be returned to the Tribe. We will hear from the witnesses today on how this bill will provide meaningful justice on the Reservation and other benefits to the community.

The bill S. 3222, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act, was introduced by Senator Merkley. Senators Wyden, Murray, and Cantwell have joined as co-sponsors.

The bill S. 3222 requires the BIA to assess the current condition of tribal fishing access facilities along the Columbia River. This bill also authorizes the BIA to contract its obligations under this bill to an Indian Tribe or tribal organization under the Indian Self-Determination and Education Assistance Act.

I would like to welcome Senator Merkley to the Committee, and we will turn to Senator Merkley in a moment for any statement that he would like to make.

On September 8th, Senators Flake and McCain introduced The Hualapai Tribe Water Rights Settlement Act of 2016. This bill would comprehensively settle all water rights claims for the Hualapai Tribe. This is a negotiated settlement of the Tribe's Federal Reserve water right claims with the State of Arizona, the Central Arizona Water Conservation District, the Salt River Project, the Freeport Minerals Corporation, and the United States.

The bill authorizes \$134 million to construct water infrastructure for the Tribe at certain trust parcels to the Reservation and reallocates 4,000 acre-feet of the Central Arizona Project water to the Tribe.

I would like to welcome Senator Flake to the hearing, and I will turn to Senator Flake in a few moments.

First, I would like to ask the Vice Chairman, Senator Tester, for his opening statement.

Senator Tester.

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. Well, thank you, Mr. Chairman. Thank you for holding this hearing today.

But first things first. I want to congratulate Senator Franken on a new granddaughter. And hopefully that bundle of joy looks more like Frannie than you.

[Laughter.]

Senator FRANKEN. I resent that.

Senator TESTER. So one of the bills we are going to hear today, as you pointed out, Mr. Chairman, is Senate Bill 2636, the Reservation Land Consolidation Act, which I introduced in March. I believe it would be a major step forward toward fulfilling the promise of restoring tribal homelands first made by the Federal Government over 80 years ago. I know you have concerns about this bill, Mr. Chairman, but I look forward to working with you because I think you are right, the land into trust situation does need to be improved.

From the early 19th century to the early 20th century, the United States adopted a Federal Indian policy of allotment which encouraged private land ownership on Indian reservations. This policy greatly reduced the portion of reservation land owned by Tribes, causing over 90 million acres to go out of trust.

Not only did Tribes lose millions of acres of land, allotment caused severe fractionation of lands. They have created a checkerboard of tribal and non-tribal ownership that causes a number of problems to this very day. The allotment policy degraded tribal governance, created jurisdictional problems that have undermined public safety, economic development, and tribal relations with neighboring communities.

Congress passed the Indian Reorganization Act in 1934 to reverse the problems that allotment caused by revitalizing tribal governments and restoring tribal homelands. Section 5 of the IRA gave the Secretary of the Interior the authority to take back land into trust for the benefit of the Tribes. And since its passage, Section 5 has helped Tribes begin to repair their land bases. Despite these efforts, the promise of IRA remains largely unfilled because regulatory hurdles have impeded Tribes from regaining their lost reservation lands.

Currently, Interior has to go through 16 steps, 16 steps just to take a parcel into trust. As a result, large portions of many reservations still have checkerboard holdings, which makes it difficult for Tribes to police their communities, regulate activity, and engage in large-scale economic development.

The Reservation Land Consolidation Act would cut through the red tape that prevents Tribes from restoring their reservation lands. It would do this by requiring the Secretary of the Interior to approve applications on on-reservation parcels into trust. And it is worth pointing out that these parcels aren't always giveaways; these lands are already owned by the Tribes.

My bill would simply streamline the fee-into-trust process for on-reservation parcels, which may help Tribes make significant progress at fixing these jurisdictional checkerboards affecting Indian Country today. In doing so, it would promote the continued re-

vitalization of tribal governments as intended by the Indian Reorganization Act, and the bill would be a big step toward fulfilling the promises made by the United States through treaties and statutes establishing reservation lands.

I want to thank you again, Mr. Chairman, for holding this hearing on the four bills before us today. I look forward to hearing from our witnesses and having a robust discussion about these bills.

The CHAIRMAN. Thank you very much, Mr. Vice Chairman.

Any other members of the Committee like to make a statement before we turn to Senators Flake and Merkley?

**STATEMENT OF HON. AL FRANKEN,  
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Sure, I would, Mr. Chairman. Thank you.

I want to thank all the witnesses today for their testimony, and obviously the Chairman and the Vice Chairman for holding this hearing.

As we have heard before in this Committee, there are many benefits of land into trust acquisitions, including the ability to create housing, promote economic activities, and protect tribal culture. The land into trust process is extremely important to Tribes across the Country. Many Tribes lost most of their trust land base in the late 19th and early 20th centuries through broken treaties and fraudulent land transactions.

In Minnesota, out of nearly 61,000 acres originally included in the Mille Lacs Indian Reservation, there are only 2,600 acres held in trust today. The land into trust process is the only avenue available to restore a vastly depleted trust land base.

As a result of the hearing today, we members who sit on this Committee can hopefully educate our colleagues who aren't on the Committee and get this issue the attention that it deserves.

Thank you again, Chairman Barrasso and Vice Chairman Tester, and to all our witnesses again today, and I look forward to your testimony.

The CHAIRMAN. Thank you, Senator Franken.  
Senator Lankford?

**STATEMENT OF HON. JAMES LANKFORD,  
U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. Mr. Chairman, I want to say, first off, I really do appreciate the Vice Chairman on this bill and the intent of it. It is a big issue for us.

Obviously, as we have discussed before and as most members of this Committee know full well, Oklahoma has a very unique dynamic, with 39 Tribes and a lot of overlapping area and a lot of integration where we are in a non-reservation State. So there is this integration between cities, States, counties that has worked very well for us as a State and a lot of partnership, but I am not sure this wouldn't break down some of that partnership and some of that relationship.

So in its current form I couldn't support it. I do think this a big issue. I would tell you whether you are in eastern Oklahoma or western Oklahoma, the rules and the timing is different for how you are going to move land into trust. So not only is it a broken



process even within our own States; the rules and the timing is not enforced consistently, and it is an issue that I frequently hear and it is one of the things that has to be resolved long-term.

Senator TESTER. We want to make sure this bill solves problems, not create problems. Look forward to working with you.

Senator LANKFORD. I agree. Look forward to it. Thank you.

The CHAIRMAN. Senator Cantwell?

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Mr. Chairman, thank you. I will be brief, since the vote has started and all our colleagues would like to get a statement in.

I want to welcome two of our witnesses here today, the Honorable Ron Allen, who is the chair of the Jamestown S'Klallam Tribe, who is going to talk about the importance of 2636, which would require mandatory approval of fee to trust applications on reservations. Thank you for your long advocacy about land into trust as an economic development tool for Tribes, so thank you for being here.

And also welcome to Paul Lumley for your leadership on S. 3222, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act, basically led by my colleague from Oregon who is here today, Senator Merkley. Glad to join in with him on that legislation and look forward to hearing both of your statements today.

Thank you.

The CHAIRMAN. We would like to welcome two Senate guests to the Committee today and I would like to call on Senator Flake.

**STATEMENT OF HON. JEFF FLAKE,  
U.S. SENATOR FROM ARIZONA**

Senator FLAKE. Thank you, Mr. Chairman, and thank you, Mr. Vice Chairman, as well. Thanks for holding this hearing and allowing me to provide testimony on S. 3300, The Hualapai Tribe Water Rights Settlement Act.

I would like to welcome Hualapai Tribe's Chairman, Dr. Clarke. Thank you for coming here and appearing and giving testimony.

Representatives from the other parties in the settlement of the State of Arizona, Central Arizona Water Conservation District, Salt River Project, Freeport Minerals Corporation, are here today as well. They are in support of this settlement. I would like to include their statements for the record.

The CHAIRMAN. No objection.

Senator FLAKE. Thank you.

Last week, this water settlement act was introduced and it is important, obviously, for the State of Arizona and the Tribes. This roughly 1 million acre reservation is ill-suited for an economy based on mining, oil and gas, timber, and agriculture. What the Hualapai Tribe has done is build an economy based on the one resource we have in abundance, and that is people wanting to see and experience the Grand Canyon and the Colorado River.

The Tribe's development of Grand Canyon West draws nearly one million visitors a year to northwestern Arizona. Without access to additional reliable water supplies, they are unable to realize its

full potential, which includes the residential community at Grand Canyon West for their tribal members who work there.

In short, the legislation provides significant, but fair, benefits to the Hualapai Tribe.

This legislation also has benefits outside of the reservation and the region. The Hualapai Tribe makes a claim to the Colorado River, a critically important water source for the State that provides roughly 40 percent of our water supplies. And because of the priority of the Tribe's claims, there is a possibility that future development of the water rights would displace current water users in Arizona. This fair settlement dedicates 4,000 acre feet of CAP's Colorado River water to the Tribe in a way that puts them on par with existing CAP water users.

Those who are unfamiliar with Arizona water, I should point out that CAP serves an area with nearly 80 percent of the State's population, so we are talking about widespread impacts here. As I have often said, Arizona has a history of forward-looking water planning. We need to continue this kind of planning and do more. This legislation is one of the next steps we need to take both for the sake of the Hualapai Tribe and for those of us in Arizona who depend on Colorado River water.

I look forward to working with the Committee to advance this bill and find a suitable offset for the spending that is authorized by it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Flake.  
Senator Merkley?

**STATEMENT OF HON. JEFF MERKLEY,  
U.S. SENATOR FROM OREGON**

Senator MERKLEY. Thank you very much, Mr. Chairman. Appreciate your holding the hearing on this bill today. I would also like to thank the co-sponsors, Senator Wyden and Senator Murray, but particularly Senator Cantwell, who serves on this Committee. I welcome Paul Lumley, the Executive Director of the Columbia River Inter-Tribal Fish Commission, who is here to testify, and I appreciate his expertise.

This legislation is important for the four treaty tribes along the Columbia River: the Yakama, the Nez Perce, Warm Springs, and Umatilla. When the Federal Government built dams along the river in the 1930s and 1940s, entire communities and hundreds of traditional tribal fishing sites were flooded. Because the construction of the dams along the river adversely impacted the treaty-protected fishing sites, Congress authorized the Corps to rehabilitate existing in-lieu sites and designate new in-lieu treaty fishing access sites.

However, this responsibility has been seriously neglected. The Federal Government failed to meet the most basic obligations of maintaining safe and sanitary conditions at the fishing sites along the river. I have personally visited to see the conditions myself, and they are shocking. Sites lack utilities, lack running water, electricity; others have no law enforcement to prevent trespassing or other public safety issues.

The Federal Government agreed to meet obligations to members of these Tribes and it is completely unacceptable that our Government has failed to live up to the agreement. Tribal members shouldn't have to live in unsafe, unsanitary conditions in order to practice their ancestral traditions.

This bill, S. 3222, is a step in the right direction. It will help make desperately needed improvements along the 31 tribal fishing sites on the Columbia River. These include structural improvements like fishing platforms, public restrooms, and general structural upkeep. It includes improvements such as fire hydrants, drinking water, electrical infrastructure for safe electrical hookups, basic sewer and septic infrastructure.

The bill also allows the BIA to contract with Tribes and tribal organizations to do enhancements chosen by the Tribe based on the Tribe's best judgment of the improvements that are needed.

I invite and encourage the members of the Committee to support passage of S. 3222 because we need to right this historic wrong. Thank you.

The CHAIRMAN. Thank you very much, Senator Merkley.

We are now going to hear from our witnesses. As the witnesses know, we are in the middle of two roll call votes. Some of the members have left, will be coming back and coming in and out as we hear your testimony, and then we will be back for questioning.

First we will hear from Mr. Larry Roberts, who is the Principal Deputy Assistant Secretary of Indian Affairs at the U.S. Department of Interior; next, the Honorable Damon Clarke, Chairman of the Hualapai Tribe of Peach Springs, Arizona; next is the Honorable Lavern Jefferson, who is the Treasurer of the Meskwaki Tribal Council of the Sac and Fox Tribe of the Mississippi in Iowa. Appreciate your being here, as well as your significant service to the Country. The Honorable Ron Allen, Treasurer of the National Congress of American Indians in Washington, DC; and Mr. Paul Lumley, who is the Executive Director of the Columbia River Inter-Tribal Fish Commission from Portland, Oregon.

I would remind the witnesses that your full statement will be made part of the official hearing record today, so please keep your statements to five minutes or less so that we may have time for questions.

I look forward to hearing your testimony, beginning with Mr. Roberts. Please proceed.

**STATEMENT OF LARRY ROBERTS, PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. ROBERTS. Thank you, Chairman Barrasso, members of the Committee. Thank you for the opportunity to testify this afternoon on four bills. I will begin with S. 3222, the Columbia River Treaty Fishing Sites bill.

The Department supports that bill with amendments. We think that the authorization in Section 2 of Senate Bill 3222 should include other agencies like Indian Health Service, as they have expertise in sanitation issues facing some sites.

With regard to the Hualapai Indian Water Settlement, S. 3300, while the Department cannot support the bill as introduced, we do

commit to continuing to work with the sponsor and the parties to move forward with legislation to achieve a settlement for the Tribe. The Department continues to believe that water settlements are certainly preferable over protracted litigation.

Negotiated settlements provide wet water to foster economic development and ensure a viable homeland for Tribes. The Hualapai certain maintains substantial reserved water rights and deserves the ability to make use of that water through a settlement for current and future generations, so the Department will continue to work closely with the Tribe to ensure continued progress on achieving a settlement.

With regard to S. 3216, the Sac and Fox bill, the Department supports that bill as well. As the Chairman noted, the bill would repeal an act that was passed in 1948. Sac and Fox Nation currently operates their own tribal court, law enforcement and detention facility, and so, if enacted, the bill would ensure that the Nation is treated similar to other Tribes across the Country.

With regard to Senator Tester's bill, Senate Bill 2636, under the fee-to-trust process currently, Tribes obviously have to purchase their lands from voluntary sellers. In many instances they are literally repurchasing with their own funds the very lands that they lost because of the allotment policy that has since been repudiated by Congress.

So the bill would mandate the Department to accept land into trust for Tribes where the subject lands are wholly within or contiguous to the Tribe's reservation. We would, under the bill, determine whether the land fits that criteria and, if so, we would be required to take it into trust. We would continue to provide notice to both the applicant and the public of the acquisition when it occurs, if the bill is enacted.

But the effect would be to restore lands within a Tribe's reservation. If purchased by the Tribe, it would facilitate housing, infrastructure, economic development, and would also reduce, over time, the checkerboard nature of reservations, which is something that the Department and Indian Country continue to grapple with to this day. And if legislation like this isn't introduced, I think we will just continue to grapple with this problem.

The bill would not change the processing of off-reservation trust acquisitions. It also wouldn't change gaming eligibility for acquisitions.

The bill, in closing, allows us to continue the successful practice of things like the land buy-back program, where we are supporting Tribes to consolidate their land holdings and remedy the failed policy of allotment.

So I want to thank you for the opportunity to testify today, and I am happy to answer any questions.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF LARRY ROBERTS, PRINCIPAL DEPUTY ASSISTANT  
SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

S. 3216

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Larry Roberts. I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the oppor-

tunity to testify before the Committee on S. 3216, a bill to repeal the Act entitled “An Act to Confer Jurisdiction on the State of Iowa Over Offenses Committed By Or Against Indians On The Sac And Fox Indian Reservation” referenced as 62 Stat. 1161, Chap. 759. The Department supports S. 3216.

#### **Criminal Jurisdiction in Indian Country**

Improving public safety in Indian Country is a bi-partisan priority. We know that Tribes are best positioned to provide for the safety and well-being of their communities and that law enforcement is a federal trust and treaty responsibility. Under the repudiated policy of termination, Congress enacted legislation that displaced federal criminal jurisdiction and transferred that jurisdiction to certain States. As a result of these laws, criminal justice systems in Indian Country were understaffed and underfunded when compared to reservations of similar size and population that were not subject to such laws. Like other more recent enactments by Congress, S. 3216 reflects the modern federal Indian policies of self-determination and self-governance. S. 3216 clarifies a muddled and complex jurisdictional scheme. We support S. 3216 and similar legislation which clarifies jurisdiction and moves forward from the termination policy of the past.

The recent passage of the Tribal Law and Order Act (TLOA) in 2010, reflects the strong federal policy to promote collaboration among tribes and the Federal Government and to promote tribal self-determination and self-governance for criminal justice in Indian Country. This legislation for the Sac and Fox Indian Reservation reflects those policies.

#### **S. 3216**

S. 3216 is a bill to repeal the Act entitled “An Act to Confer Jurisdiction on the State of Iowa Over Offenses Committed By Or Against Indians On The Sac And Fox Indian Reservation.” By repealing 62 Stat. 1161, Chap. 759, criminal jurisdiction over offenses by or against Indians on the Sac and Fox Indian Reservation would be exclusive to either the Tribe or the Federal Government under the Major Crimes Act.

The Sac and Fox Nation (“Tribe”) located in Iowa currently operates their own tribal court, law enforcement and detention facility. However, the Bureau of Indian Affairs, Office of Justice Services does not currently fund any of these activities. The only related funding the BIA provides to the Tribe is Consolidated Tribal Government Program (CTGP) funding, which the Tribe uses to support their tribal court operations through a P.L. 93–638 contract. Enactment of S. 3216 would ensure that the Tribe is treated similar to other Tribes across Indian country where either BIA or the Tribe provides those federal law enforcement services.

If enacted into law, the bill could have funding implications as current funding streams to existing tribes cannot be reduced in order to make funds available for the Tribe. The Department is aware that both the Tribe and the State of Iowa seek to repeal of 62 Stat 1161 Chap. 759 and support S. 3216.

#### **Conclusion**

Thank you for providing the Department the opportunity to testify on S. 3216. The Department supports S. 3216. I am available to answer any questions the Committee may have.

#### **S. 3222**

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Larry Roberts. I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to testify before the Committee on S. 3222, the “Columbia River In Lieu and Treaty Fishing Access Sites Improvement Act,” a bill to authorize the Secretary of the Interior to assess sanitation and safety conditions at Bureau of Indian Affairs (BIA) facilities that were constructed to provide treaty tribes access to traditional fishing grounds and expend funds on construction of facilities and structures to improve those conditions. The Department supports S. 3222, with amendments.

#### **Background**

United States entered into treaties with tribes along the Columbia River in the 1850s guaranteeing the tribes the rights to their fisheries in exchange for the peaceful cession of most of their territory. However, by the late 1880s, non-Natives had encroached on many of the tribes’ treaty fisheries. The United States filed lawsuits to protect the tribes’ fishing rights, and resulting court determinations re-affirmed their treaty-protected right of access to usual and accustomed fishing grounds.

Currently, the Columbia River Inter-Tribal Fisheries Commission (CRITFC) provides the operations and maintenance of 28 fishing sites along the Columbia River through a BIA Indian Self-Determination and Education Assistance Act Title I, P.L. 93-638 contract, for the exclusive use of Indian fishers from the four CRITFC member tribes.<sup>1</sup> The sites, which are held by the United States for the benefit of the tribes, offer a wide range of amenities for the fishers including access roads and parking areas, boat ramps and docks, fish cleaning tables, net racks, drying sheds, restrooms, mechanical buildings, and shelters.

#### **S. 3222**

S. 3222, if enacted, would authorize the Secretary of the Interior to assess sanitation and safety conditions at BIA facilities that were constructed to mitigate 400 acres of traditional fishing villages inundated by federal hydro development. Today many of these facilities receive high use in excess of what they were originally designed. Any funds appropriated would be expended on facilities and structures to improve those conditions, and for other purposes set forth in Section 2(c).

The Department agrees that S. 3222 would help ensure that the lands necessary for Indians to conduct treaty protected fishing remain wholesome and open for Indian fishers actively engaged in the continued use of these fisheries.

The Department notes that Section 2(a) of the bill applies to sites “owned” by BIA. We think it would be more accurate to describe the sites as “lands held by the United States for the benefit of the Treaty Tribes.”

In addition, the Department recommends extending the Secretary of the Interior’s exclusive authorization-delegation authority in Sec. 2 (b) of S. 3222, to include other agencies, (in addition to tribes or tribal organizations already in the bill), that have expertise in the issues facing some sites.

Section 2(c)(2) of S. 3222 would authorize the improvement of “. . . access to electricity, sewer and water infrastructure, where feasible, to reflect needs for sanitary and safe use of facilities.” When such structures exist it is important to note, that water sources and washrooms are community structures, and where it is feasible, such community structures could be improved or expanded. The Department would not interpret this provision to include improvements for individual electricity and/or sewer water hookups associated with recreational vehicles.

#### **Conclusion**

Thank you for providing the Department the opportunity to provide input into S. 3222. The Department supports S. 3222, with amendments. I am available to answer any questions the Committee may have.

#### **S. 3300**

Chairman Barrasso, Vice Chairman Tester and members of the Committee, I am Larry Roberts, Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department’s position on S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016, which would approve and provide authorizations to carry out a settlement of the water right claims of the Hualapai Tribe in Arizona (Tribe). We have significant concerns about the Federal costs of the settlement, which totals approximately \$173.5 million in 2016 dollars, and may also underestimate its true cost. In addition, the Department is unable to conclude at this time that a pipeline bringing water from the Colorado River to remote locations on the Hualapai Reservation is the best and least costly alternative to supply water to the Hualapai Reservation (Reservation) communities and economic development projects. Therefore, the Department cannot support S. 3300 as introduced.

#### **I. Introduction**

First, let me begin by acknowledging that disputes over Indian water rights are expensive and divisive. In many instances, Indian water rights disputes, which may last decades, are tangible barriers to social and economic progress for tribes, and significantly hinder the rational and beneficial management of water resources. Settlements of Indian water rights disputes break down these barriers and help create conditions that improve water resources management by providing certainty as to the rights of all water users who are parties to the dispute. That certainty provides opportunities for economic development, improves relationships, and encourages collaboration among neighboring communities. This has been proven time and again

<sup>1</sup> Yakima Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

throughout the West as the United States has pursued a policy of settling Indian water rights disputes whenever possible. Indian water rights settlements are also consistent with the federal trust responsibility to American Indians and with federal policy promoting Indian self-determination and economic self-sufficiency.

For these reasons and more, for nearly 30 years, federally recognized Indian tribes, states, local parties, and the Federal Government have acknowledged that negotiated Indian water rights settlements are preferable to the protracted litigation over Indian water rights claims. This Administration supports the resolution of Indian water rights claims through negotiated settlement where possible, consistent with the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Right Claims* (“*Criteria and Procedures*”). These principles include that the United States participates in water settlements consistent with its role as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights included in a settlement; and that settlements should include appropriate cost-sharing by all parties proportionate to the benefits received by each from the settlement.

## II. Historical Context

### A. The Hualapai Reservation and the Hualapai Tribe

The aboriginal homeland of the Hualapai Tribe is the Grand Canyon and plateau region to the south of the Grand Canyon. The main Reservation was established by Executive Order on January 4, 1883, and encompasses approximately 992,462 acres of tribal trust lands located in northwestern Arizona. The tribal headquarters is Peach Springs, Arizona, near the southern boundary of the Reservation. The entire northern boundary of the main Reservation is 108 miles along the Colorado River in the Grand Canyon. In addition to the main Reservation, there is also a 60-acre Executive Order Reservation located approximately 40 miles south of the main Reservation.

According to the 2007 population estimates, the population of the Reservation was 1,776. The total tribal membership in 2010, including members living off the Reservation, was 2,300. The majority of on-Reservation residents reside in or near Peach Springs.

Employment on the Reservation primarily consists of recreation, tourism, and tribal and Federal Government services. Tourism is driven primarily by activities related to the Grand Canyon: the Tribe’s tourism center, Grand Canyon West; and river rafting in the Colorado River. The Tribe also owns and operates the Hualapai Lodge, located in Peach Springs.

Opened in 2007, Grand Canyon West includes the Skywalk, a horseshoe-shaped glass-bottom walkway that extends out from the rim of the Grand Canyon. Annual visitation at Grand Canyon West has steadily increased since its opening, and exceeded one million visitors for the first time in 2015, making it the primary economic driver on the Reservation.

### B. Water Resources of the Hualapai Reservation

The main Reservation is located primarily in the Colorado River basin with a small portion in the Upper Verde River basin. The majority of streams on the Reservation are ephemeral. Several springs discharging from the regional aquifer at the bottom of canyons can provide baseflow for short perennial reaches, which ultimately discharge to the Colorado River. The largest of these perennial streams are Diamond Creek and Spencer Creek, with mean annual flows of over 3,700 acre-feet per year (afy) and about 4,600 afy, respectively. The springs that feed these streams are remotely located in deep canyons and are not practically accessible for use by the Tribe. Smaller springs on the plateaus provide water for livestock purposes.

Groundwater resources on the Reservation occur in varying degrees of magnitude, depending on the type and location of water-bearing zones. The Department is conducting groundwater studies and is preparing to perform two additional groundwater studies in an effort to accurately characterize the groundwater resources on and near the Reservation.

The major water use on the Reservation occurs in two locations: The town of Peach Springs and Grand Canyon West. Three wells serve the Peach Springs public water supply system and are located approximately 6.5 miles southwest of the town. The current level of water use in Peach Springs is approximately 250 afy. All three supply wells produce water from the Truxton aquifer, an aquifer in the alluvial sand and gravel and lake deposits of Truxton Valley that extends off the Reservation. Water for Grand Canyon West is supplied via a pipeline from a well approximately

30 miles away. Current water use at Grand Canyon West is 40 afy. Current cumulative water use for the Reservation is around 300 afy.

### **III. Proposed Hualapai Tribe Settlement Legislation**

#### *A. Negotiation*

The Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 2011, when the United States established a negotiating team to negotiate a comprehensive settlement of all the Tribe's water rights within Arizona. The settlement was divided into two phases, the first phase addressed certain water rights in the Bill Williams River basin and resulted in the Bill Williams River Water Rights Settlement Act of 2014, P.L. 113–223. The second phase, addressed in S. 3300, covers additional water rights in the Bill Williams River basin, as well as the remainder of the Tribe's water rights in the Colorado River basin and the Verde River basin.

S. 3300 would resolve the Tribe's water rights claims in Arizona; ratify, and confirm the Hualapai Tribe water rights settlement agreement among the Hualapai Tribe, the United States, the State of Arizona, and others; and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre-feet of fourth-priority Central Arizona Project (CAP) non-Indian agriculture priority water to the Tribe to be used for any purpose on or off the Reservation within the lower Colorado River basin in Arizona.

S. 3300 authorizes the appropriation of a total of \$173,500,000 for the following purposes:

- \$134,500,000 to design and construct the Hualapai Water Project (Project), consisting of approximately 70 miles of pipeline from the Colorado River to Peach Springs and Grand Canyon West, two water treatment plants, several pumping plants, and other appurtenant features with an overall capacity designed to deliver 3,414 afy;
- \$32,000,000 for the Hualapai OM&R Trust Account, to be used by the Tribe for operation, maintenance, and replacement of the Project;
- \$5,000,000 for the Secretary of the Interior for operation, maintenance, and replacement of the Project until such time that title of the Project is transferred to the Tribe by the Secretary; and
- \$2,000,000 for the Secretary to provide technical assistance to the Tribe, including operation and management training for the Project.

### **IV. Department of the Interior Positions on S. 3300**

While the Department has a record of strong support for Indian water rights settlements, the Department has significant concerns about S. 3300 and does not support the legislation for the reasons stated below.

The Department is concerned by the disparity between the level of funding called for in S.3300 and the relatively small amount of water to be delivered to the Tribe through the Project. The Department is also concerned about the scope and size of the Project given current and projected water uses on the Reservation. In addition, we believe the cost to construct a 70-mile pipeline from the Colorado River lifting water over 4,000 feet in elevation will be significantly higher than the amount authorized in S. 3300. Moreover, we believe that the proposed infrastructure project is likely to generate substantial litigation on multiple fronts.

The *Criteria and Procedures* require us to analyze whether the settlement “include[s] non-Federal cost sharing proportionate to the benefits received by the non-Federal parties.” In this instance, the State parties have failed to make earnest efforts to provide for adequate cost-sharing relative to the benefits they will receive in this Indian water rights settlement.

The Department is concerned that S.3300 would set a precedent requiring tribes to pay CAP costs that are unrelated to settlement benefits. This settlement would be the first in Arizona that includes CAP water but does not use any portion of the CAP operating system for water deliveries to the Reservation. Despite lack of use of the system, S. 3300 would obligate the Tribe to pay the CAP fixed OM&R charges for all water deliveries. Under such an arrangement, water delivered to the Reservation would incur two OM&R costs—the fixed CAP OM&R charge and the Tribe's own Project OM&R costs. The Department does not support this “double charge” for water deliveries.

S. 3300 also includes two provisions that the Department continues to have concerns about: a broad waiver of sovereign immunity and a restriction limiting all future land into trust acquisitions to be accomplished only through acts of Congress.



While other Arizona Indian water rights settlements contain somewhat similar provisions, the Department has opposed such provisions in the past and continues to do so. The sovereign immunity waiver is even broader than prior provisions and is far broader than it needs to be for any reasonable purpose.

As a final matter, the Department is deeply concerned about provisions of S.3300 and the settlement agreement that prohibit the Tribe and the United States from objecting to any use of groundwater outside the boundaries of the Reservation even if those uses interfere with acknowledged Federal reserved groundwater rights. This provision represents significant risks to both the Tribe and the United States and implicates Federal trust responsibilities.

#### **V. Conclusion**

S. 3300 reflects a significant effort by the Tribe and the state parties to settle the Hualapai Tribe's water rights through negotiation. The Department shares this goal and is committed to working with the Tribe and the parties to reach a final and fair settlement of the Tribe's water rights claims that we can fully support.

Mr. Chairman, this concludes my written statement. I would be pleased to answer any questions the Committee may have.

The CHAIRMAN. Well, thank you very much.

We are down to the last two minutes or so on the vote, and I don't want you to have to testify, Chairman Clarke, without people up here to hear exactly what you have to say, so I am going to call a brief recess until one of the other members who is voting returns. I know Senator Tester is on his way back, so if it is all right with you, I am just going to interrupt the proceedings at this point, and then as soon as one of the members returns, we will continue with the hearing.

Thank you.

[Recess.]

Senator LANKFORD. [Presiding.] I will bring us back into our legislative hearing. I apologize for the recess as members go back and forth during the voting time, but we would like to continue our testimony and time.

I believe up next is Chairman Clarke, so we would be honored to be able to receive your testimony now.

#### **STATEMENT OF HON. DAMON CLARKE, Ed.D., CHAIRMAN, HUALAPAI TRIBE**

Mr. CLARKE. Chairman Barrasso, Vice Chairman Tester, and members of the Committee, my name is Dr. Damon Clarke, Chairman of the Hualapai Tribe. The Hualapai Tribe strongly supports S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016.

The Hualapai Reservation encompasses approximately one million acres in northwestern Arizona. Our Reservation has no significant surface streams other than the Colorado River, and has very limited groundwater. While the Tribe is presently able to serve our principal residential community at Peach Springs with groundwater, it is a resource subject to depletion and water levels on the Reservation is dropping.

The Colorado River is the only feasible supply for satisfying long-term water needs to our Reservation. Our Tribe needs the delivery of Colorado River water both to provide a permanent and secure water supply to our future population in Peach Springs and elsewhere on our Reservation, and to realize the unique opportunities for economic development at Grand Canyon West, a world class resort tourist development the Tribe operates on the western rim of the Grand Canyon on our Reservation.

Grand Canyon West currently employs approximately 300 tribal members, as well as about 300 non-tribal members, and hosts over a million visitors a year. But it is located on a two-hour drive on a dirt road from Peach Springs, where virtually all our tribal members on the reservation live. Thus, tribal members at Grand Canyon West have a daily route of four hours a day to their jobs at Grand Canyon West, and longer in inclement weather.

Currently, it is impossible to locate a residential community at Grand Canyon West because of the lack of water there. This imposes an unsustainable burden on the tribal members and their family. The Tribes needs Colorado River water at Grand Canyon West in order to allow tribal members to reside on the Reservation near their jobs.

We are proud of the fact that the Tribe is moving forward towards achieving full employment for our members and economic self-sufficiency. But the severe lack of water on the reservation is a major obstacle in reaching these goals. With additional water, the Tribe could take advantage of the potential for further development, and that would provide additional jobs for tribal members and non-Indians, as well as revenues for our tribal government.

Over the past six years, the Hualapai Tribe has negotiated a comprehensive settlement of all the Tribe's reserve water rights. The United States actively participated in the settlement negotiations through a Federal negotiating team. Legislation to ratify this settlement is now before the Committee. The legislation is strongly supported by the State of Arizona and other parties to the settlement: the Salt River Project, the Central Arizona Water Conservatory District and Freeport Minerals Company.

Let me summarize the principal elements of this legislation. The Act comprehensively settles all of the Hualapai Tribe's federally reserved water right claims for its Reservation and trust lands. The Tribe receives exclusive rights to all groundwater and surface water on the Reservation and its other trust lands, and agrees not to object to any pumping of groundwater or diversions of surface water outside the Reservation or its trust lands.

The Tribe receives an allocation of 4,000 acre feet a year of Central Arizona Project water from the Colorado Water. Of this amount, 1,115 acre-feet a year will be "firmed," half by the United States and half by the State, until 2108 to protect against future shortages of the Colorado River in Arizona.

The Act authorizes a federally funded infrastructure project to deliver up to 3,414 acre feet a year from the Colorado River to the Reservation. The project would construct a diversion of water from the Colorado River at Diamond Creek, which is on the Reservation, and then a 70-mile pipeline to deliver water to both Peach Springs and Grand Canyon West. The construction cost of this infrastructure project is about \$134.5 million.

I want to emphasize the two major non-Federal contributions to this settlement. First, pursuant to the Bill Williams River Water Right Settlement Act of 2014 provided a major contribution to the Hualapai Tribe which we can use to purchase additional Colorado River water rights. The 2014 Act viewed that money via non-Federal contribution to the settlement. Freeport also contributed \$1

million to help fund our engineering study of the infrastructure alternatives for the settlement.

Second, the State of Arizona is making a contribution affirming a portion of the CAP water.

Passage of this legislation is essential for our Tribe to realize the full potential on our Reservation. The use of water for economic development within the parameters of past water right settlements. Most Indian water rights settlements in this century have provided Federal funding for infrastructure development to support commercial, as well as residential, uses of water.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions you may have, and our Tribe will help in any way to securing enactment of this critical legislation.

[The prepared statement of Mr. Clarke follows:]

Senator LANKFORD. Thank you very much, Chairman.

PREPARED STATEMENT OF HON. DAMON CLARKE, ED.D., CHAIRMAN, HUALAPAI TRIBE

Chairman Barrasso, Vice Chairman Tester and members of the Committee, my name is Dr. Damon Clarke, Chairman of the Hualapai Tribe. Our Hualapai Tribal Council strongly supports S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016. Before I describe the major elements of this legislation and the critical benefits the Tribe receives from it, let me briefly inform the Committee of the Tribe's water needs.

The Hualapai Reservation encompasses approximately 1 million acres in northwestern Arizona. All lands on the Reservation are tribal trust lands; there are no allotments or fee inholdings. The Colorado River forms the 108-mile northern boundary of the Reservation through a portion of the Grand Canyon.

Our Reservation has no significant surface streams other than the Colorado River, and has very limited groundwater resources. While the Tribe is presently able to serve our principal residential community, Peach Springs, with groundwater, that groundwater is a depletable resource, and well levels on the Reservation are dropping. The only feasible water supply for satisfying the long-term future needs of Peach Springs and of the rest of our Reservation is the Colorado River. Our Tribe needs delivery of Colorado River water both to provide a permanent and secure water supply to our future population in Peach Springs and elsewhere on our Reservation, and to realize the unique opportunities for economic development we have already undertaken at Grand Canyon West—a world class tourist development the Tribe has constructed and operates on the Reservation on the western rim of the Grand Canyon.

Grand Canyon West currently employs approximately 300 tribal members (as well as about 300 non-members) and hosts over 1 million visitors a year. But it is located a two-hour drive on a dirt road from Peach Springs, where virtually all tribal members on the Reservation live. Thus, tribal employees at Grand Canyon West have daily round-trip commutes of four hours a day to their jobs at Grand Canyon West, and longer in inclement weather. Currently, it is impossible to locate a residential community at Grand Canyon West because of the lack of water there. This imposes an unsustainable burden on tribal members and their families. The Tribe needs Colorado River water at Grand Canyon West in order to allow tribal members to reside on the Reservation near to their jobs.

The Tribe also employs approximately 100 other tribal members in a tribally-owned hotel in Peach Springs and a seasonal tribal river rafting enterprise. We are proud of the fact that, without conducting any gaming, our Tribe is moving towards achieving full employment for our members and economic self-sufficiency.

But the severe lack of water on the Reservation is the major obstacle to reaching these goals. The nearest groundwater to Grand Canyon West is 35 miles away, and that supply is barely adequate for current operations, and completely inadequate for growth. With additional water, the Tribe could take advantage of the potential for further development that would provide additional jobs for tribal members and non-Indians, as well as revenues for our tribal government. And critically, as noted above, a supply of water at Grand Canyon West would also permit the Tribe to develop a residential community there, so our tribal employees would have the option

of living at Grand Canyon West, near their jobs, instead of having unreasonably long commutes from Peach Springs to get to their jobs.

Over the past six years, the Hualapai Tribe has negotiated a comprehensive settlement of all of the Tribe's reserved water rights with the State of Arizona and major private entities in Arizona. The United States actively participated in these settlement negotiations through a Federal Negotiating Team consisting of representatives from affected Interior Department agencies and from the Department of Justice. Legislation to ratify this settlement is now before the Committee. The legislation is strongly supported by the State of Arizona and by the private entities who are parties to the settlement—the Salt River Project, Central Arizona Water Conservatory District and Freeport Minerals Company.

The settlement legislation would authorize the expenditure of \$134.5 million in federal funds to construct the infrastructure necessary to deliver vitally needed Colorado River water to Peach Springs and Grand Canyon West, as well as an OM&R Trust Fund of \$32 million to defray future costs of operating, maintaining and replacing the project works. In addition, under the Bill Williams River Water Rights Settlement Act of 2014, Pub. L. 113–223, 128 Stat. 2096 (Dec. 16, 2014), the Freeport Minerals Company provided a major contribution to a Hualapai Tribe economic development fund which the Tribe can use to purchase Colorado River water rights in order to facilitate this comprehensive settlement. The 2014 Act states that this significant funding from Freeport constitutes a non-federal contribution to the Tribe's comprehensive water rights settlement. Sec. 5(d)(1)(B). Freeport also contributed an additional \$1 million to the Tribe that enabled the Tribe to complete an essential “appraisal level” study to determine the feasibility and costs of an infrastructure project to bring Colorado River water to the Hualapai Reservation. That study is the technical report referenced in this settlement legislation.

Both of these contributions by Freeport represent a very substantial non-federal contribution to the costs of this comprehensive settlement.

Let me now summarize the principal elements of the comprehensive water rights settlement ratified by the legislation before you:

- The Act comprehensively settles all of the Hualapai Tribe's federally reserved water right claims for its Reservation and trust lands.
- The Tribe receives exclusive rights to all groundwater and surface water on the Reservation and its other trust lands, and agrees not to object to any pumping of groundwater or diversions of surface water outside the Reservation or its trust lands.
- The Tribe also receives an allocation of 4,000 acre feet a year of Central Arizona Project water from the Colorado River. Of this amount, 1,115 acre feet a year will be “firmed” (half by the United States and half by the State) until 2108 to protect against future shortages of the availability of Colorado River water in Arizona. The “firming” of this water by the State of Arizona represents another significant non-federal contribution to the costs of the settlement. The Act also provides the Tribe itself can “firm” additional portions of the Central Arizona Project Water allocated to the Tribe in any year the water is available and is not needed for delivery to the Reservation.
- As noted, the legislation authorizes a federally funded infrastructure project to deliver up to 3,414 acre feet a year from the Colorado River to the Reservation. The project would construct a diversion of water from the Colorado River on the Reservation at Diamond Creek and then a 70-mile pipeline to deliver the water to both Peach Springs and Grand Canyon West. This system would replace the Tribe's reliance on the existing groundwater wells (except when those wells are needed as an emergency backup). The construction cost of this water delivery infrastructure is \$134.5 million (in February 2016 dollars). In addition, the legislation proposes additional federal funding of \$32 million for a trust account to defray operation, maintenance and replacement (OM&R) costs of the project.

Of the several alternatives studied for an infrastructure project to deliver water to the Reservation, this Diamond Creek diversion project has significant advantages—(1) the diversion is at an area which is already developed as a boat launch onto the Colorado River, thus minimizing disturbance of any pristine areas in the Grand Canyon; (2) there is already a road from Peach Springs down to the River at Diamond Creek, thus providing good access for construction, and (3) this location is one of the few areas along the Colorado River where there is relatively flat land back from the River's edge to locate pumps and infrastructure.

This also is the only project alternative that delivers water to both Peach Springs and Grand Canyon West, providing sensible flexibility to allow the Tribe to serve its needs both in the near term and in the future. In addition to laying the founda-

tion for a residential community at Grand Canyon West, the proposed project also provides for delivery of water to expand the Tribe's world-class tourism attraction there. The use of water for such economic development is well within the parameters of past Indian water rights settlements. Most Indian water rights settlements in this century have provided federal funding for infrastructure development to support commercial as well as residential uses of water. There is, for example, ample recent precedent for federally-funded irrigation projects to deliver water to Indian reservations for purposes of commercial agricultural, where agriculture is the basis of a tribe's economy. And in other recent settlements, federally-funded projects have delivered water to support other kinds of economic development—including hydro-power and other energy development, agriculture and a retail travel center.

The Hualapai Reservation does not have the natural resources to permit agriculture, timber or mineral development, but its virtually unique location on the Grand Canyon gives it a strong basis to create a self-sustaining tourism-based economy. The Tribe should be encouraged and supported in its efforts to develop the resources and economic opportunities that it has. Just as a federally funded irrigation project for an agriculture-based tribal economy supports a "commercial" use of water, so too the "commercial" use of water to develop Grand Canyon West is fully deserving of the Federal Government's support.

As I noted above, passage of this legislation is absolutely essential if our Tribe is to realize the full economic potential of our Reservation. We have done everything possible to provide jobs and income to our people in order to lift them out of poverty—but the lack of a secure and replenishable water supply on our Reservation is our major obstacle to achieving economic self-sufficiency. We recognize that the infrastructure project authorized by this legislation entails federal costs, but it is far more costly for our people to be mired in poverty and to lack reasonable and adequate access to jobs.

Federal Indian policy has long favored economic self-sufficiency on Indian reservations, and the quantification of tribal water rights reserved under federal law in a manner that allows tribes to put their water to an economically productive use. Passage of this legislation is essential to allow my Tribe to attain these goals.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our Tribe will help in any way it can to secure enactment of this critical legislation.

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#### SUPPLEMENTAL TESTIMONY

Chairman Barrasso, Vice Chairman Tester and members of the Committee, my name is Dr. Damon Clarke, Chairman of the Hualapai Tribe. I would like to supplement my testimony regarding S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016, which I presented at the Committee's hearing on September 14, 2016. This supplemental testimony is in response to several matters raised by the written testimony of Acting Assistant Secretary of the Interior, Lawrence Roberts.

##### **1. Concerns about level of funding for water delivery infrastructure project**

The Assistant Secretary's testimony (p. 4) expresses concerns about (1) the level of funding contained in S. 3300 and "the . . . amount of water to be delivered to the Tribe through the Project," and (2) "the scope and size of the Project given current and projected water uses on the Reservation." I can assure the Committee that the Project was designed to deliver the amount of water that is minimally necessary to satisfy the Tribe's water needs in the foreseeable future for an economically self-sufficient homeland. This is the standard established by the Arizona Supreme Court for quantifying tribal reserved water rights. See *In re General Adjudication of All Rights to Use Water in the Gila River System and Source*, 35 P.2d 68 (Ariz. 2011) (*Gila V*). The Tribe's needs are based upon expert projections of future population growth on the Reservation over a 100-year period (the same period that State law requires non-Indian communities in Arizona to use in permitting new residential areas). The Tribe's calculation of needs also takes account of all future needs, both municipal and domestic, as well as the planned expansion of Grand Canyon West, the Tribe's showcase tourism resource along the Grand Canyon—which the Assistant Secretary's testimony acknowledges is "the primary economic driver on the Reservation" (Roberts testimony, p. 3).

Since under this settlement the Tribe waives all future claims to federally reserved water rights, the Project must deliver the amount of water that the Tribe requires for the foreseeable future. Otherwise this settlement would not be "consistent with the federal trust responsibility to American Indians and with federal policy promoting Indian. . . economic self-sufficiency" which the Assistant Secretary

avows is the purpose of “settling Indian water rights disputes.” (Roberts Testimony, p.1).

Finally, Assistant Secretary Roberts’ testimony makes the unsupported assertion that “the cost to construct a 70 mile pipeline from the Colorado River lifting water over 4,000 feet in elevation will be significantly higher than the amount authorized in S. 3300.” However, the amounts authorized in S. 3300 are directly based on a thorough study conducted by a highly regarded construction engineering firm, DOWL–HKM of Tucson, Arizona. The study was conducted at above the appraisal-level standard commonly used in other Indian water settlements (some of which have experienced cost overruns) and was designed and completed in close consultation with the Bureau of Reclamation. The Tribe knows of no reason to expect cost overrides in this project, and the federal participants in the settlement negotiation have never presented any specific reasons to believe there will be cost overruns. This statement in the testimony of Assistant Secretary Roberts is entirely unexplained and without any foundation.

## **2. The possibility of litigation**

The Assistant Secretary’s testimony (at p.4) also asserts that “the proposed infrastructure project is likely to generate substantial litigation on multiple fronts.” The Tribe knows of no possible or threatened litigation if the Project is authorized. In the nearly six years of settlement negotiations in which representatives of the Interior and Justice Departments participated, no one has ever suggested or alluded to any such litigation threat. Of course, if any interested party had raised the possibility of litigation against the Project, the Tribe and the other settlement parties would have attempted to address its concerns. But again, this statement in the Assistant Secretary’s testimony is entirely unexplained and without any foundation.

## **3. Groundwater uses**

The Assistant Secretary’s testimony expresses concerns about provisions in S. 3300 and the settlement agreement that prohibit the Tribe from objecting to the pumping of groundwater outside the boundaries of the Reservation (p. 5). These concerns ignore the provisions of S. 3300 and of the settlement agreement that give the Tribe the exclusive use of all groundwater on the Reservation, thereby prohibiting any non-Indian from objecting to any tribal use of groundwater on the Reservation. These concerns also ignore the fact that the settlement is a negotiated package with reciprocal concessions. As the Interior and Justice Department participants in the negotiations over the past six years well know, the State parties to the negotiations firmly refused to agree to any restrictions on groundwater pumping outside the Reservation, and advised the Tribe and federal participants that any such restrictions would require changes to State law that would be impossible to enact in the Arizona Legislature.

The Assistant Secretary’s testimony also alludes to groundwater studies the Department currently is conducting on the Reservation, and to additional groundwater studies that it expresses an intention to conduct (p. 3). These additional studies of groundwater on the Reservation furnish no basis for Congress to delay its consideration of S. 3300—or for the Department to withhold its support of this legislation. Multiple studies of groundwater resources on the Reservation have been done, over a period of decades. None of the extensive studies that have been done over time has shown that there is any appreciable amount of accessible, reliable groundwater on the Reservation.

We attach as Exhibit A a summary of past Reservation groundwater studies that has been compiled by Natural Resources Consulting Engineers (NRCE), the Tribe’s expert hydrologist. The summary is divided into two categories: studies done of the “Deep Regional Aquifer” that extends under most of the Reservation, including the Grand Canyon West area, and studies done of the “Alluvial-Volcanic Aquifers” that include the Truxton aquifer.

The NRCE summary references seven studies of the Deep Aquifer, done in 1962, 1977, 1987, 1992, 1999, 2005 and 2013. These studies were done by, among others, the United States Geological Survey (USGS), the Bureau of Land Management (BLM), the Bureau of Indian Affairs (BIA), the Bureau of Reclamation (BOR), NRCE and DOWL–HKM. The only well that has been successfully completed in the area near Grand Canyon West (GCW–1) suffers from both low water quality and low yield. It is currently not used for this reason.

Even more studies—nine in all—over an even longer period of time, have been done of the alluvial aquifer. The NRCE summary lists studies of this aquifer that were done in 1942, 1973, 1975, 1987, 1991, 1992, 2007, 2009 and 2011, by USGS, the Indian Health Service, BOR and the Tribe. Again, none of these studies suggests

that the alluvial aquifer can serve as the source of water for the Tribe's long term needs.

Finally, NRCE has advised the Tribe and Interior Department that the construction costs of an infrastructure project to produce and deliver 3,400 acre feet a year of groundwater on the Reservation would most likely not be appreciably lower than the cost of the infrastructure project authorized by S. 3300 to deliver water from the Colorado River to both Peach Springs and Grand Canyon West.

NRCE estimates that if deep groundwater is pumped for supplying a substantial amount of this water, the construction and operating costs of delivering that groundwater would likely exceed the costs of the Project in S. 3300. This is so because of the extraordinarily high cost of drilling the large number of wells that would be needed to produce this amount of groundwater, with each such well having an estimated unit cost of \$2 million. Thus, no money would be saved by a project to produce and deliver groundwater instead of Colorado River water, even if sufficient groundwater was available. And given the number of past studies that have failed to show any significant amount of groundwater on the Reservation, there is no basis for the new studies that the Department proposes to undertake, which will only serve to delay this matter for years more.

We appreciate the opportunity to submit this supplement to the Committee.

#### **Attachment**

MEMORANDUM, DECEMBER 4, 2015

To: Hualapai Project Files  
From: NRCE, Inc.

RE: PREVIOUS GROUNDWATER STUDIES

This memorandum presents a list and brief description of previous groundwater studies on the Hualapai Reservation. The list of studies is separated between the deep regional aquifer and the alluvial-volcanic aquifers.

#### **Deep Regional Aquifer**

*Description:* The deep regional aquifer on the Hualapai Reservation includes the Redwall-Muav Aquifer (R-Aquifer) and the Tapeats Sandstone lying at the bottom of the Paleozoic section in contact with crystalline basement rocks.

- Representative well yields from the R-Aquifer range from 5 to 40 gallons per minute, with 150 gallons per minute the highest reported in the region (Twenter, 1962; Myers, 1987; and others).
- There is some evidence indicating that faults, fractures, and folds may enhance aquifer properties that can localize potential for larger well yields; however targeting these features using surface geophysics is speculative and drilling costs are very high.
- The USGS conducted a hydrogeological study of the Reservation between 1957 and 1962 (Twenter, 1962). The R-Aquifer was identified as the most promising aquifer, but drilling depths were prohibitive.
- Several wells were drilled to various depths (mostly shallow) in the late 1960's and 1970's by the BLM and the BIA loosely based on Twenter's recommendations but most were unsuccessful (Huntoon, 1977).
- Several deeper wells were completed on the Hualapai Plateau in 1992 by the Bureau of Reclamation. One well drilled near the GCW resort in 1992 targeted the deep regional R-Aquifer. The well was deepened in 1999 (Watt, 2000). That well (GCW-1) encountered groundwater only in the Tapeats Sandstone. The shallower Redwall and Muav Formations were unsaturated. The well is equipped with an oilfield-type pumping unit but is currently unused due to low water quality and low yield (15–26 gpm).
- NRCE was contracted in 2005 to investigate and evaluate all possible water supply options for the resort. The preferred alternative recommended diversion from the Colorado River. Groundwater development options were judged to be infeasible for a variety of reasons, but primarily because of their inability to supply the sustainable yield required by the Grand Canyon West resort at a reasonable overall project cost.
- DOWL (2013) further assessed a few Colorado River alternatives considered in the NRCE study. Groundwater development alternatives were judged to be infeasible in this study for the same reasons as the 2005 study by NRCE.

#### **Alluvial-Volcanic Aquifers**

*Description:* The main alluvial-volcanic aquifers are in the northern Aubrey Valley around Frazier Wells (eastern part of the Reservation), Westwater Canyon, Peach Springs-Truxton Wash Valley, and elsewhere along the southwest flank of the

Hualapai Plateau (e.g. Horse Flat area and the upper Milkweed Canyon). The alluvial-volcanic aquifers have areal extents that are limited by the valleys and washes that contain them. The volume of stored groundwater is similarly limited. Depth to water is generally shallow, typically less than 500 feet below ground level, and well yields of up to 170 gallons per minute have been reported. Water from these aquifers is generally acceptable for domestic use.

- The Santa Fe Railroad drilled 6 fairly shallow wells within Peach Springs between 1903 and 1922. The Hualapai Tribe acquired use of water from the railroad spring-fed water system between 1931 and 1954. One well near the town is currently used.
- The USGS conducted a study in 1942 to assist location of prospective sites for development of stock water supply on the Hualapai Reservation (Peterson, 1942). In addition to a hydrogeological characterization of the region, the study inventoried numerous existing wells and stock ponds. Peterson recommended 18 sites across the Reservation for drill-testing.
- N.J. Devlin evaluated the Peach Springs water system in 1973 and considered possibilities for development of additional water supplies for the town. Devlin recommended further development of the aquifer contained in the lake beds of Truxton Valley. Development of other springs and other exploration areas were judged to have low potential.
- The Indian Health Service drilled two wells in Truxton Valley in 1972 to provide additional water supply for Peach Springs. A third well was drilled in 1976 by the IHS in Truxton Valley near the wells drilled in 1972. These wells currently supply all of the water needs for the town of Peach Springs.
- The Bureau of Reclamation drilled an unsuccessful hole into Cenozoic volcanics near the head of Milkweed Canyon in 1975. A second successful well in Westwater Canyon alluvium and volcanics was completed in 1975. This well currently provides most of the water to Grand Canyon West via a 30-mile pipeline.
- A well drilled in the Frazier Wells area in the eastern part of the Reservation serves a fish-rearing facility. An additional two boreholes were completed in the shallow alluvial aquifer in the Frazier Wells area in an effort by the Tribe to develop additional groundwater supply. Both wells were dry and were abandoned.
- Regional hydrogeological mapping by Richard Young (State University of New York at Geneseo) focused on the Tertiary volcano-sedimentary aquifer in the area of Westwater Canyon near the well drilled by the Bureau of Reclamation (Young, R. A., 1987, 1991, 1992, 2007). Stantec (2009) estimated the safe yield of this aquifer to be approximately 600 afy. Further development of this aquifer is prohibited by tribal policy as it would likely reduce spring flow (considered to be a cultural resource) in its discharge area.
- NRCE conducted an evaluation of the groundwater supply for the town of Peach Springs in 2011. That study included an inventory of wells in the sub-regional area, a comprehensive review of the regional geology, an evaluation of hydrologically attractive areas for development of additional groundwater supplies in the southern part of the Reservation, and made some specific recommendations for exploratory evaluation of both the R-Aquifer and alluvialvolcanic aquifers. The adequacy of natural aquifer recharge to support existing and future water needs was also assessed.

Next I will introduce the Honorable Lavern Jefferson, who is the Treasurer of the Meskwaki Tribal Council, Sac and Fox Tribe of the Mississippi in Iowa.

Thanks for being here today. We are honored to be able to receive your testimony.

**STATEMENT OF HON. LAVERN JEFFERSON, TREASURER,  
MESKWAKI TRIBAL COUNCIL, SAC AND FOX TRIBE OF THE  
MISSISSIPPI**

Mr. JEFFERSON. Chairman Barrasso, Vice Chairman Tester, and members of the Committee, good afternoon. I am Lavern Jefferson, Treasurer of the Sac and Fox Tribe of the Mississippi in Iowa, also



known as the Meskwaki Nation. Thank you for this opportunity to testify today in support of S. 3216, which would repeal a 1948 act of Congress that conferred jurisdiction to the State of Iowa over offenses committed by or against Indians on our settlement.

The history of my Tribe, like many Tribes in the United States, is complicated and unique, and its present criminal justice system is a subject that cannot be understood unless I share a bit about our story.

While our lands are held presently in trust by the Federal Government, we do not live on a reservation. In 1857, the Meskwaki Nation of Iowa was the only Indian Tribe to purchase land in Iowa for the establishment of the Meskwaki Indian Settlement. Not being considered citizens of the United States, my ancestors could not hold title to land. Because of this, the Iowa legislature consented to the governor of Iowa holding our land in State trust.

By 1896, the governor of Iowa held 2,720 acres of land in trust for the benefit of the Tribe, and the Federal Government agreed to accept this land into trust. We are one of the few Tribes in this Nation who settled on a piece of land. The fact that we were never placed on a reservation remains a very important part of our history and heritage. Due to the State of Iowa's aid in holding land for the Tribe, the Meskwaki and the State have enjoyed a progressive and positive relationship that has endured over the years.

For generations, we took care of our own criminal issues and shared jurisdiction over crimes committed on the Settlement with the Federal Government. This changed in 1948, during the termination era, when the Federal Government passed a one-sentence law to give the State of Iowa criminal jurisdiction over the Settlement. At that time, we did not have a formal tribal police force, nor could we afford to create one.

The 1948 Act derived from the Kansas Act, which sought to address reported gaps in jurisdiction over crimes committed between Indians occurring in Indian Country within Kansas. Prior to enactment of the Kansas Act, there was a concern that if the State did not step into the gap to prosecute criminal offenses on Indian land, criminal conduct would go unchecked. These laws provided States the authority to ensure that would not happen.

However, 68 years after the passage of the 1948 Act, circumstances have changed and the Settlement is a much different place. To start, the Meskwaki Nation now operates and maintains a fully functional criminal justice system. We have a full-time police department consisting of 10 officers. The department is the primary agency dispatched to all emergency and non-emergency complaints involving potential criminal violations which occur on the Settlement. Our tribal police officers are certified by the State of Iowa. This enables and allows them to arrest non-Natives who commit crimes on the Settlement.

The Tribe has a fully functioning court system. Our trial court is composed of full-time judges, all of whom are law-trained and members of a State bar. The court handles both civil and criminal cases and has adopted court rules. There are approximately 30 lawyers who are admitted to practice before the court, including a prosecutor and public defender.

Offenders are offered various forms of rehabilitation and punishment, and those convicted of crimes are regularly placed on probation, working with a full-time probation officer who sets up and coordinates community service, performs drug tests, conducts unannounced home visits, and takes other steps to assure that probationers are complying with court sentencing orders.

Despite these great strides, the 1948 Act continued to undermine effective law enforcement and implementation of a criminal justice system on the Meskwaki Settlement.

The 1948 Act has created a dual-concurrent criminal justice system composed of both tribal and State justice systems. Because a criminal case can be brought both in State court and in tribal court, a Native American defendant who commits an offense on the Settlement must face the possibility of two prosecutions by the State and the Tribe.

Consider a case where a non-Native and a Native both commit the same offense on the Settlement. The non-Native is prosecuted once in State court, as tribal courts have no jurisdiction over non-Natives. The Native, however, is prosecuted twice, once in State court and once in tribal court, for the very same offense. The Native defendant is therefore penalized more harshly and is subjected to greater fines, costs, and receives two criminal convictions for committing one offense. This is unfair and unjust.

Earlier this year, the State of Iowa approved legislation calling on Congress to repeal this outdated law. We are grateful that our delegation has answered this call and thank Senator Grassley and Senator Ernst and Senator Leahy for introducing this legislation.

Congress should now take swift action to pass the bill. By doing so, you will promote better law enforcement on our Settlement and strengthen our ability to chart our own course as a sovereign Nation. This Committee has taken great strides to eliminate many of the injustices of the Termination Era, and the Meskwaki Nation applauds you for your effort. We urge you to take similar action here.

Thank you again for this opportunity, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Jefferson follows:]

PREPARED STATEMENT OF HON. LAVERN JEFFERSON, TREASURER, MESKWAKI TRIBAL COUNCIL, SAC AND FOX TRIBE OF THE MISSISSIPPI

Chairman Barrasso, Vice Chairman Tester, and Members of the Committee:

Good afternoon. I am Lavern Jefferson, Treasurer of the Sac and Fox Tribe of the Mississippi in Iowa, also known as the Meskwaki Nation. Thank you for this opportunity to testify today in support of S. 3216, which would repeal a 1948 act of Congress that conferred jurisdiction to the State of Iowa over offenses committed by or against Indians on our Settlement.

The history of my tribe, like many tribes in the United States, is complicated and unique, and its present criminal justice system is a subject that cannot be understood unless I tell you a little of the historical dimensions of how we got to where we are now.

While our lands are held presently in trust by the Federal Government, we do not live on a reservation. On July 13, 1857, the Meskwaki Nation of Iowa was the only Indian Tribe to purchase land in Iowa for the establishment of the Meskwaki Indian Settlement. Not being considered citizens of the United States, my ancestors could not hold title to land. Because of this, the Iowa Legislature consented to the Governor of Iowa holding our land in state trust.

Between 1856 and 1896, the Tribe acquired more land in Tama County with funds generated through the sale of pelts and horses, charitable contributions, and treaty annuities. By 1896, the Governor of Iowa held title to 2,720 acres of land in trust for the benefit of the Tribe. Finally, in 1896 the Federal Government agreed to accept this land into trust. We are one of the few, and perhaps the only, tribe in this nation who settled on a piece of land. The fact that we were never placed on a reservation remains a very important part of our history and heritage. Due to the State of Iowa's aid in holding land for the tribe, the Meskwaki and the State have enjoyed a progressive and positive relationship that has endured over the years.

For generations, we took care of our own criminal issues and problems and shared jurisdiction over crimes committed on the Settlement with the Federal Government. This all changed in 1948, when the Federal Government—in the era of termination and assimilation, and at a time when our tribe did not have formal mechanisms for law enforcement on the Settlement nor was the tribe financially in a position to create a criminal justice system similar to what existed elsewhere in the state—passed a one-sentence law to give the State of Iowa criminal jurisdiction over the Settlement.

A precursor to the well-known Public Law 280, the Act of June 30, 1948 states:

That jurisdiction is hereby conferred on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation in that State to the same extent as its courts have jurisdiction generally over offenses committed within said State outside any Indian reservation; provided however, that nothing herein contained shall deprive the courts of the United States of jurisdiction over offense defined by the laws of the United States committed by or against Indians on Indian reservations.

The law is a descendent of the Kansas Act, which sought to address reported gaps in jurisdiction over crimes committed between Indians occurring in Indian country within Kansas. Prior to enactment of the Kansas Act there was a concern that if the State did not step into the gap to prosecute criminal offenses on Indian land, criminal conduct would go unchecked. Enactment of the Kansas Act led to the passage of similar laws including the 1948 Act (which is virtually identical to the Kansas Act). This is no accident—a letter written by the head of an agency under the Bureau of Indian Affairs after the passage of the Kansas Act states “that the Indian Office in Washington [BIA] is planning to recommend similar legislation for Indian areas in other states when the plan has been tried out in Kansas.”

Eight years after passage of the Kansas Act, Congress moved forward on the bill that our tribe seeks to repeal today. In the corresponding committee report the House Committee on Public Lands wrote, “The need of this legislation arises from the fact that in certain instances, Indian tribes do not enforce the laws covering offenses committed by Indians; under the present law the State has no jurisdiction to enforce laws designed to protect the Indians from crime perpetrated by or against Indians; and law and order should be established on the reservation when the tribal laws for the discipline of its members have broken down.”

Additionally, an accompanying letter from Under Secretary of the Interior Oscar L. Chapman said, “On the Sac and Fox Indian Reservation in Iowa. . .the old tribal laws and customs for the disciplines of its members have broken down completely. There is no Indian court. A number of years ago, an Indian judge was employed by the Federal Government but, because of factionalism and the close blood and marital relationship among the members of the tribe, the Indian judge did not satisfactorily perform the duties of his office, and the position was abolished. The employment of Indian police on the reservation met with similar difficulties.”

Sixty-eight years after passage of the 1948 Act, the Settlement is a much different place. The Meskawki Nation operates and maintains a fully functional criminal justice system.

*We have a full time police department consisting of 10 officers.* The Meskwaki Nation Police Department is the primary law enforcement agency dispatched to all emergency and non-emergency complaints involving potential criminal violations which occur on the Settlement. All tribal police officers are certified by the State of Iowa—this enables and allows them to arrest non-natives who commit crimes on the Settlement.

*The Tribe has a fully functioning court system.* Our trial court is composed of full time judges all of whom are law trained and members of a state bar. The Court handles both civil and criminal cases and has adopted court rules. There are approximately 30 lawyers who are admitted to practice before the Sac and Fox of the Mississippi in Iowa Court.

The Tribe appoints indigent defendants with court appointed lawyers at tribal expense. *Appeals are heard by a Court of Appeals* composed of judges who are all attorneys as well.

*The Tribe employs a full time prosecutor who is a licensed attorney.* The Prosecutor handles all criminal prosecutions on behalf of the Tribe in tribal court. In addition, the prosecutor regularly works closely with the tribal police department on criminal cases and investigations. The tribal prosecutor is available 24 hours a day to render advice to the Tribal Police Department including the drafting of search warrants and subpoenas.

Offenders are offered various forms of rehabilitation and punishment and those convicted of crimes are regularly placed on probation, working with a *full time probation officer* who sets up and coordinates community service, performs drug tests, conducts unannounced home visits and takes other steps to assure that probationers are complying with court sentencing orders.

Despite making great strides and progress in developing its own criminal justice system, the ramifications of the 1948 Act continue to plague effective law enforcement and the implementation of a criminal justice system on the Meskwaki Settlement.

The 1948 Act has created a dual-concurrent criminal justice system composed of both tribal and state justice systems. Because a criminal case can be brought both in state court and in tribal court, a Native American defendant who commits an offense on the Settlement must face the possibility of two prosecutions by the state and the tribe. This is exceedingly unfair, and violates basic notions of justice and fair play. This also produces an absurd and unduly burdensome application of criminal laws.

Consider a case where a non-native and native both commit the same offense on the Settlement. The non-native is prosecuted once in state court, as Tribal courts have no jurisdiction over non-natives. The native, however, is prosecuted twice (Once in State Court and once in Tribal Court) for the very same offense. The native defendant is therefore penalized more harshly and is subjected to greater fines, costs and receives two criminal convictions for committing one offense. There have been occasions where defendants had to report to two probation officers.

If Congress repeals the 1948 statute, the role of the state criminal justice system in Indian country would be limited to non-Indian v. non-Indian crimes only—or similar to the situation on most reservations today.

This Committee has taken great strides to eliminate some of the unjust vestiges of the Termination Era, and I applaud you for your effort. We urge you to take similar action here.

Earlier this year the State of Iowa approved legislation calling on Congress to repeal this unjust and outdated law. Congress should heed the State's call and take swift action on this important bill. By doing so, you will promote better law enforcement on our Settlement and strengthen our ability to chart our own course as a sovereign nation.

This Committee has taken great strides to eliminate some of the unjust vestiges of the Termination Era, and the Meskwaki Nation applauds you for your effort.

We urge you to take similar action here.

Thank you again for this opportunity, and I am happy to answer any questions you may have.

The CHAIRMAN. [Presiding.] Well, thank you very much for your testimony.

Mr. ALLEN.

#### **STATEMENT OF HON. W. RON ALLEN, TREASURER, NATIONAL CONGRESS OF AMERICAN INDIANS**

Mr. ALLEN. Thank you, Mr. Chairman and members of the Committee. As you have noted, my name is Ron Allen. I am the Treasurer for the National Congress of American Indians. I am also the Chairman of the Jamestown S'Kallam Tribe, located in western Washington State. And I am here to testify on behalf of our organization, which represents and advocates for Indian Country, the 567 Indian Nations that have many issues that come before this Committee and Congress.

So we are in full support of S. 2636. We have been working very closely with the Department of the Interior and Bureau of Indian Affairs, and we want to compliment them. This Administration has made it a priority to help Tribes restore our homelands.

As Senator Tester noted, the Indian Reorganization Act authorized the Interior to be able to take land into trust so we can restore our homelands. We know about the Allotment Act. That Act caused all kinds of problems in the history of Indian Country throughout the United States for Tribes and their tribal lands, as well as the allottees who own land individually.

This bill, in our opinion, will help expedite the restoration of those homelands and help the Tribes to be able to strengthen our ability to become more self-reliant, to strengthen our economies, to provide better clarity with regard to both civil and criminal jurisdiction issues that happen within our reservation borders, and to protect many of the interests of the Tribes, including cultural interests.

What this bill would do, even though the Administration has been working to refine its system, this bill will refine it even better and faster. It doesn't mean that the Administration won't look at any issues of concern that have been raised by sister Tribes or by local communities, etcetera. As Assistant Secretary Roberts noted, it will be very public when these proposals are being taken into trust and subsequently into reservation status. But what it will do is it helps us move our agenda forward.

I have been a chairman for 40 years in my Tribe and have had the pleasure of watching Tribes across the Country become stronger governments and become stronger in terms of their business acumen. The business component of our tribal governments that generate the unrestricted revenues to help meet the unmet needs that Congress and the Administration can't provide. We can show you all kinds of areas where they can't provide the kinds of resources necessary to deal with health and education and housing, *et cetera*.

So what this bill will do is streamline that process, allow us to be able to take those lands into trust, help us improve our infrastructure for housing, for economic development, for light industry, even heavy industry if we want to pursue those kind of venues on our reservation. It helps us provide better accommodations for our people. So it really will help solve our problems in our community and we just think it works well with what the current Administration is doing.

Its current goal in this eight-year administration has been 500,000 acres out of the 90 million. We only have about 8, 9 percent now that is in reservation trust status, and it is costly for us to reacquire those homelands. The non-Indian owners around us, you know, they basically take advantage of us in terms of acquiring those properties, so we use our resources to do that, so we just want to be able to improve our governmental infrastructure and our capacity to be able to advance our agenda.

So we appreciate this Committee taking this up and we look forward to working with the Congress and the Administration with regard to any refinements necessary with regard to questions they

would have with respect to the Tribes being able to reacquire their homelands and have a better future for our future citizens.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF HON. W. RON ALLEN, TREASURER, NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities, I would like to thank the Senate Committee on Indian Affairs for holding this hearing on these important pieces of legislation.

I am here to present NCAI's testimony on S. 2636—the Reservation Land Consolidation Act of 2016. This simple and straightforward legislation will amend the Indian Reorganization Act to allow tribes to restore their tribal homelands by making certain land transactions occurring within tribal reservation boundaries mandatory. NCAI fully supports this legislation as it fits within the original intent of the Indian Reorganization Act, by helping restore tribal homelands and streamlines the lengthy, and sometimes arduous, process at the Department of the Interior. We urge this Committee and Congress to pass S. 2636 to further tribal self-governance and self-determination by restoring tribal homelands.

After the initial colonial and treaty era, tribes had to contend with the Indian removal policies of the 1830s which placed tribes on reservations, in many cases hundreds if not thousands of miles away from their traditional homelands and sacred places. With the passing of the Dawes Act in 1887, the Federal Government began to allot Indian lands, breaking up reservations into smaller parcels and placing them into individual ownership.

While some individual Indians received title to the lands, most of it was sold to settlers, timber and mining interests, and otherwise left tribal ownership. In total, nearly two-thirds of all reservation lands, more than 90 million acres, were removed from tribal control without compensation.

Allotment created a checker board effect on tribal lands, with some land within the reservation boundaries held in trust, and some owned by private land owners or other. The non-contiguous nature of jurisdiction lands has harmed tribes' ability to exercise their sovereignty governmental rights over all of the lands within their reservation boundaries.

The IRA marked a significant change in federal Indian law policy, signaled a shifting from the detrimental policies of assimilation and allotment, to the reorganizing of tribal governments and restoration of tribal homelands. The principal goal of the Indian Reorganization Act was to reverse the abrupt decline in the economic, cultural, governmental, and social well-being of tribal communities.

One of the IRA's principal authors, Congressman Howard of Nebraska, described the fundamental purpose of the IRA:

This Congress, by adopting this bill, can make a partial restitution to the Indians for a whole century of wrongs and of broken faith, and even more important—for this bill looks not to the past but to the future—can release the creative energies of the Indians in order that they may learn to take a normal and natural place in the American community.<sup>1</sup>

Section 5 of the IRA (25 U.S.C. § 465), which will be bolstered by the passing of S. 2636, is broadly designed to implement the fundamental principle that tribal homelands are an integral part in supporting tribal self-governance, self-determination, and tribal cultures:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.<sup>2</sup>

Further, the legacy of the allotment policy still means that deeply fractionated heirship of tribal trust lands means that, for most tribes, far more Indian land passes out of trust than into trust each year.

<sup>1</sup> 78 Cong. Rec. 11731 (1934).

<sup>2</sup> 25 U.S.C. § 465

Only about 8 percent of the 90 million acres of lost tribal lands have been restored since the IRA was passed over 80 years ago—and most of this was land that was returned soon after passage of the Act. While the current Administration has established a goal of placing 500,000 acres back into trust, and is close to achieving it, that's still only about half a percent of the original 90 million acres.

Today, many tribes are located far away from their historical, cultural, and sacred places, and far from traditional hunting, fishing, and gathering areas. And many of these lands are insufficient lands to support housing, exercise civil and criminal jurisdiction, economic development, enforce, and expand tribal infrastructure—essential, to practice true tribal self-governance.

The restoration of tribal homelands is the most fundamental obligation of the federal trust responsibility.

The bill before the Committee today, S. 2636, plays an important role in strengthening the original intent of the IRA while helping support tribal self-governance and self-determination by making commonsense tribal land acquisitions to restore the tribal jurisdiction over their homelands.

The trust land acquisitions impacted by S. 2636 take place in extremely rural areas and involve home sites of less than 30 acres within the tribe's current reservation boundaries. These acquisitions are not controversial in any way, and necessary for the consolidation of fractionated and allotted lands which most often are grazing, forestry, agricultural, housing, health care clinics that serve both Indian and non-Indians, and Indian schools.

S. 2636 also addresses one of the most difficult issues in the land to trust process which is raised by tribal leaders at every NCAI meeting: the backlog of applications and the interminable delays on decisions at the Department of the Interior.

Too often have tribes spent scarce resources to purchase land and prepare a trust application only to have it sit for years or even decades without a response. In addition, the Department of the Interior has limited resources in its budget to address all of the applications in a timely manner. By restoring lands already owned by a tribe back to trust status within the reservation boundaries, allows both tribes and the Department of the Interior to focus their resources elsewhere because these decisions are non-controversial. Tribes will no longer risk losing funding and support for the projects that they have planned for the land and will be better equipped to provided services and opportunities for their tribal citizens.

Further, while S. 2636 fits squarely into the original intent of the IRA and Section 5, it supports tribal self-governance and self-determination. Land consolidation and restoration of trust lands within reservations boundaries provides surety for tribes looking to exercise the fundamental right of self-governance. Lack of contiguous parcels of land within a tribe's boundaries makes it extremely difficult to plan development projects, buildout infrastructure, provide health and education services to tribal citizens, exercise tribal jurisdiction to protect the safety of all members of the community.

In closing, the simple clarification S. 2636 makes to Section 5 of the IRA not only seeks to bolster the original intent of the Act to restore tribal governments and homelands, but stands in the 21st Century policies of further tribal self-governance. NCAI fully supports S. 2636 and asks that this Committee act swiftly to pass it so it can be considered by the Senate.

The CHAIRMAN. Thank you very much, Mr. Allen.  
Mr. LUMLEY.

**STATEMENT OF PAUL LUMLEY, EXECUTIVE DIRECTOR,  
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION**

Mr. LUMLEY. Thank you, Mr. Chairman. It is a great pleasure and an honor to be here today. My name is Paul Lumley. I am the Executive Director of the Columbia River Inter-Tribal Fish Commission, and I am here today to present the views of four Tribes that have treaty rights to fish and hunt at all usual and accustomed places along the Columbia River: the Yakama, the Umatilla, Warm Springs, and Nez Perce. And today we stand in strong support of Senate Bill 3222.

That treaty right to fish is only part of it. We also have the right to access the river. And there have been many legal determinations, historic determinations concluding such, and we even have

modern day recognitions, as well, such as Public Law 100-581, which resulted in the construction of 31 in-lien treaty fishing access sites. That construction was completed in the year 2011.

I especially want to thank Senators Merkley, Wyden, Murray, and Cantwell for their support on this important legislation. Some of those Senators have been out to view these sites and recognize the severe conditions.

We urgently need this bill to pass to address three primary areas: safety, sanitary, and health.

These fishing sites drew immediate attention primarily because of overuse of the sites as a result of more fish runs, more fishing seasons, and the fact that we have a housing crisis on the Columbia River. And that housing crisis was caused in large part by the Corps of Engineers because they have not lived up to their obligation at this time to rebuild those villages that were lost due to the construction of the hydropower dams.

That legislation is being considered elsewhere. Back to this bill, I want to talk about the importance of addressing the living conditions along these areas.

I used to be the executive director of the National American Indian Housing Council, so I have seen housing conditions up and down the river, I have seen them across the Nation, and I have never seen it this bad anywhere else in the Nation, and I have traveled the Nation. It is bad out there, so we are hoping that this bill will address the severe safety and sanitary issues that we are currently experiencing.

Now, we do have funding for long-term operation of maintenance of these sites that is contracted to the Bureau of Indian Affairs. That funding will be depleted in the year 2022. At that point, we are going to hand the keys back to the Bureau of Indian Affairs to conduct operational maintenance, and I can guaranty there will be a housing crisis. So that is a serious issue that needs to be addressed, as well, in the future.

For now, we are doing the best we can to address the basic services. It is a big stretch of the river, 140 miles, and it is not easy. We completed an assessment recently and showed that we are substantially lacking in potable water, clean water stations, restrooms, showers, septic systems. Fire suppression is a very substantial issue for us. We have fire hydrants that aren't hooked up to water. Structures have burned because of it and we have a lack of extinguishers.

Mr. Chairman, I wanted to leave with you and the Committee a stack of photographs. I would be happy to provide you electronic copies. It shows some of the severe conditions. Some of these facilities, for example, this one here at Lyle Point shows RV structures that have been turned into permanent living conditions that are really substandard living. So we will leave these photographs with you and send you some electronic copies.

The CHAIRMAN. And if you could also provide the electronic copy, that would be terrific. Thank you.

Mr. LUMLEY. You are welcome.

So, Mr. Chairman, we stand before you still in strong support of Senate Bill 3222. I heard a few minutes ago that there was a proposed change by Bureau of Indian Affairs to address other Federal



agencies. We would support that as well. But even if this bill passes, it will not solve all of our problems. We have the long-term operational maintenance fund to be concerned about.

Also, in my written testimony I talk about the substantial lack of enforcement of these sites. We only have two officers. When Bureau of Indian Affairs handed us the enforcement authority, the program was about 60 percent greater than what we are funded at currently. So we do have a strong shortfall there in enforcement.

So once again, Mr. Chairman, strongly supporting Senate Bill 3222.

[The prepared statement of Mr. Lumley follows:]

PREPARED STATEMENT OF PAUL LUMLEY, EXECUTIVE DIRECTOR, COLUMBIA RIVER  
INTER-TRIBAL FISH COMMISSION

Chairman Barrasso and members of the Committee, the Columbia River Inter-Tribal Fish Commission (CRITFC) is pleased to share its view on Senate Bill 3222, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act. I am testifying in support of this legislation and on behalf of the four member tribes of the Columbia River Inter-Tribal Fish Commission wish to express our appreciation for the bold attention and unity of the Northwest Congressional delegation to assemble and introduce legislation, including S. 3222, to rectify wrongs stretching back nearly eighty years that were done to tribal communities along the river. My testimony will address the history and legal authority of CRITFC, a brief history of the In-Lieu and Treaty Fishing Access Sites and conclude with a current assessment of conditions and needs at the sites themselves. Though S. 3222 does not explicitly address law enforcement needs at the fishing sites my testimony will speak to this service's fundamental role in public safety.

**Commission History and Legal Authorities**

The combined ancestral homelands of our four tribes cover roughly one-third of the entire Columbia River Basin in Washington, Oregon, and Idaho. Our existence on the Columbia River stretches beyond 10,000 years to time immemorial. Salmon has always been a unifying force and we rely on its abundance for physical and cultural sustenance. Collectively, we gathered at places like Celilo Falls to share in the harvest, forging alliances that exist today. Our fishing practices were disciplined and designed to ensure that the salmon resource was protected, and even worshipped, so it would always flourish.

Salmon is so fundamental to our society that in 1855 when our four sovereign tribes<sup>1</sup> and the United States collaborated and negotiated treaties, our tribal leaders explicitly reserved—and the U.S. agreed to assure—our right to fish in perpetuity within our ancestral homelands as well as to “take fish at all usual and accustomed places.” The treaties of 1855 were all ratified by the Senate of the United States. The Supremacy Clause of the Constitution applies to all such treaties.

The Columbia River Inter-Tribal Fish Commission was formed in 1977 by resolutions from the four Columbia River treaty tribes: Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, and Nez Perce Tribe. CRITFC's mission is to ensure a unified voice in the overall management of the fishery resource and to assist in protecting reserved treaty rights through the exercise of the inherent sovereign powers of the tribes. CRITFC provides coordination and technical assistance to the tribes in regional, national and international efforts to ensure that outstanding treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of our tribal fisheries into perpetuity.

Today the CRITFC tribes are globally-recognized leaders in fisheries restoration and management, working in collaboration with state, federal, and private entities. We are principals in the region's efforts to halt the decline of salmon, lamprey, and sturgeon populations and rebuild them to levels that support ceremonial, subsistence and commercial harvests. To achieve these objectives, our actions emphasize “gravel-to-gravel” management including supplementation of natural stocks, healthy

<sup>1</sup>Treaty with the Yakama Tribe, June 9, 1855, 12 Stat. 951; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Umatilla Tribe, June 9, 1855, 12 Stat. 945; Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat. 957.

watersheds, and collaborative efforts. Programs referenced in this testimony are carried out pursuant to the Indian Self-Determination and Assistance Act. Our programs are integrated as much as possible with state and federal salmon management and enforcement efforts.

#### **A Brief History of the In-Lieu and Treaty Fishing Access Sites**

Before the advent of non-Indian settlement, our people had thriving salmon-based communities all along the Columbia River. After the treaties were negotiated and ratified in the 1850s, our people living in the Columbia Basin continued to fish at numerous places along the Columbia River and its tributaries.

By the late 1880s, non-Indians had encroached upon many of the treaty tribes' usual and accustomed fishing grounds and access to the fishing grounds was blocked. During 1888–89, George Gordon, Special Indian Agent, investigated the Indian fisheries along the Columbia River and several tributaries and found that Indian fishers were being excluded from many of their traditional fishing grounds. Agent Gordon submitted his findings and recommended that the U.S. government purchase or withdraw from entry approximately 2,300 acres along the Columbia for use by tribal fishers. Although the government never acted on Agent Gordon's recommendations to acquire lands for tribal fishers, the U.S. did file several lawsuits seeking to protect the tribes' right to take fish at usual and accustomed fishing grounds (e.g., *U.S. v. Taylor*, *U.S. v. Winans*, *U.S. v. Seufert Brothers*, *U.S. v. Brookfield Fisheries*). As a result of these lawsuits, the tribes' treaty-protected right of access to usual and accustomed fishing grounds was firmly established as a matter of law.

During the 1930's, the Army Corps of Engineers (Corps), in response to congressionally mandated studies, proposed that a series of dams be built along the Columbia River. The Bonneville Dam was the first dam to be built in accordance with the Corps of Engineers proposals. Construction of the Bonneville Dam inundated the tribes' ancient fishing grounds and villages from the dam site to above The Dalles, Oregon. In 1939, a settlement agreement was reached between the tribes and the United States relative to the inundation of these places. This agreement was approved by resolution of the Warm Springs, Yakama, and Umatilla tribes in 1939 and by the Secretary of War in 1940; it provided for the War Department to acquire approximately four hundred acres of lands at six sites along the Columbia River and install fishing and ancillary facilities to be used by tribal fishers.

In 1945, Congress included in the Rivers and Harbors Act of 1945 an authorization to the Secretary of War to, "acquire lands and provide facilities in the States of Oregon and Washington to replace Indian fishing ground submerged or destroyed as a result of the construction of Bonneville Dam. . . and that such lands and facilities shall be transferred to the Secretary of the Interior for the use and benefit of the Indians, and shall be subject to the same conditions, safeguards, and protections as the treaty fishing grounds submerged or destroyed" (P.L. 79–14). An appropriation of \$50,000 was authorized; this sum was increased to \$185,000 in 1955. The legislative history indicates that the 1945 congressional authorization intended to implement the terms of the 1939 agreement. See House Report No. 1000, 78th Congress, 2nd Session; Senate Report No. 1189, 78th Congress, 2nd Session.

There were numerous disagreements among and between the Corps, the Bureau of Indian Affairs (BIA), state and local governments, and the tribes regarding the acquisition and development of the sites. It took the Corps nearly twenty years to acquire five sites, totaling slightly more than 40 acres. Two sites were essentially the same as proposed in 1939 (Wind River; Underwood); three sites were different (Lone Pine; Cascade Locks; Cooks); and the sixth site (Big Eddy) was acquired but later subsumed by The Dalles Dam project.

Over the years, other dams were built, destroying other treaty fishing grounds and villages, and other development occurred, leading to other fishing conflicts and restrictions. In 1973, as a result of litigation initiated after the Army Corps of Engineers proposed to alter the water levels of the pools behind the dams, a settlement order was entered by the U.S. District Court for Oregon. The judgment and order in that case, *CTUIR v. Calloway*, noted that the Secretary of the Army and the Secretary of the Interior agreed to propose legislation providing for the acquisition and improvement of additional sites and the upgrading of all sites to National Park Service standards. Legislation was forwarded to Congress in 1974, but no action was taken by Congress at that time. The BIA pursued similar legislation again in the early 1980s but failed to garner Administration support.

During the late 1970s and 1980s several things occurred that influenced in-lieu site issues. As a result of the improvement in the fish runs in the mid-1980s, the pressure on the existing in-lieu sites and the need for improvements and additional access to fishing sites increased. Pressure on the existing in-lieu sites and other

public camping/boat launching sites also resulted from the increase in recreational activities along the Columbia River. In addition, between 1982 and 1986 numerous bills seeking to establish a Columbia Gorge National Scenic Area were considered by members of the Northwest congressional delegation. During consideration of the Gorge legislation, the tribes once again brought attention to the in-lieu site issue, specifically the fact that the tribes were still owed significant acreage for fishing sites from the 1939 agreement. Although the congressional delegation decided not to address the in-lieu site issue in the Gorge legislation, several offices indicated they would consider providing additional fishing access and support sites in the future (Senator Evans (R-WA) and Senator Hatfield (R-OR)).

In 1987 and 1988, at the request of Senator Evans and the Senate Select Committee on Indian Affairs, the tribes identified a number of locations which could be suitable for additional access and support sites. All of these sites were already being used by tribal fishers. During hearings held before the Senate Select Committee in April 1988, representatives from the Corps of Engineers testified that the Corps required additional legislation before the Corps could provide the tribes additional sites along the Columbia. The 1988 legislation (P.L. 100-581) provided the Corps with the authority the agency suggested to the Select Committee at the hearing.

#### SUMMARY OF P.L. 100-581

Public Law 100 581, Title IV Columbia River Treaty Fishing Access Sites was enacted in November 1988. The legislation has six major elements: §401(a)—designates certain federal lands along the Columbia River between Bonneville and McNary dams to be administered to provide access to usual and accustomed treaty fishing places and other ancillary fishing activities for members of the Nez Perce, Umatilla, Warm Springs and Yakama tribes.

§401(b)—requires the Corps of Engineers to (1) identify and acquire at least six additional sites adjacent to Bonneville Pool from willing sellers for the purpose of providing access and ancillary fishing facilities; (2) improve the designated federal lands and acquired lands to provide facilities for treaty fishing and ancillary activities and then transfer those lands and facilities to the Department of Interior for the purpose of maintaining the sites; and (3) make improvements at the five existing (original) in lieu sites.

§401(c)—specifies that the Corps shall treat the costs of implementing the §401(b)(2) (b)(3) as project costs of the Columbia River projects and allocate such costs in accordance with existing principles of allocating Columbia River project costs.

§401(d)—authorizes appropriation of \$ 2 million to acquire the Bonneville Pool sites from willing sellers.

§401(e)—provides the Secretary of Interior with the right of first refusal to accept any excess federal lands adjacent the Columbia between Bonneville and McNary dams and notes the total acreage provided adjacent to the Bonneville Pool not exceed 360 acres.

§401(f)—contains a savings provision to protect existing treaty and other rights.

Several post authorization amendments have been enacted that modify the legislation. These amendments provide the Corps with flexibility on technical boundary adjustments at the §401(a) sites, increase the authorization for appropriations to acquire sites in Bonneville Pool to \$4 million, authorize the Corps to transfer capitalized funding for operations and maintenance to the BIA, and authorize the Corps to make improvements at Celilo Village.

#### SITE IMPLEMENTATION ISSUES

##### Site Development and Planning

The tribes, Corps, and BIA (the Task Force) met regularly from 1989–2011 to discuss and address various implementation issues. The construction of facilities occurred in incremental contracts, each issued for a set of sites (4–6 at a time) and taking approximately one year to complete. Conceptual site designs were developed in the early 1990s and the Corps obtained OMB budgetary authorization to proceed with implementation using cost estimates based on the conceptual designs. The Task Force refined these designs as construction proceeded based on cost, site constraints, cultural resources issues, and engineering feasibility as well as the tribes' recommendations, fishers' needs, and BIA input.

Throughout the implementation process, the Task Force addressed various issues with a cooperative, government-to-government approach. Although there was some bureaucratic resistance initially, the cooperative approach proved to be effective for developing solutions to difficult issues. For example, as many of the new sites were located near historic fishing places, the Task Force had to address the potential for

impacts to cultural resources. The Task Force developed a cultural resources MOA that outlined various processes and considerations that respected the tribes' concerns. Similarly, the Tribal Employment Rights Offices assisted the Task Force in developing tribal employment opportunities during site construction.

The Corps completed construction at the sites in 2011. Facilities at the sites include access roads and parking areas, boat ramps and docks, fish cleaning tables, net racks, drying sheds, restrooms, mechanical buildings, and shelters. Six additional sites were acquired along Bonneville Pool from willing sellers; with the 5 original in-lieu sites and the addition of one 401(a) (designated) site, there are now 12 sites in Bonneville Pool totaling 189 acres. The acreage amount for all the sites is approximately 718 acres. The sites are located throughout the three-pool, 140-mile long, Zone 6 area. There are ten new treaty fishing launch facilities in Washington; the total number of sites with launch facilities in Washington is 12. There are six new launch sites in Oregon; the Oregon side did not have sites with launch facilities prior to P.L. 100–581.

#### **Operation and Maintenance Issues**

For all new treaty fishing access sites (those designated in the P.L. 100–581 legislation and those acquired by the Corps of Engineers) and for the new facilities at the original in-lieu sites, the legislation requires that the Corps transfer those sites and facilities to the Department of Interior “for the purpose of maintaining the sites.” There is a long history of inadequate funding to provide operation and maintenance and enforcement protection services at the sites. Faced with the prospect of having additional sites added to its administrative responsibilities without additional funding, the BIA sought to make the Corps responsible for funding the O&M. In 1994, the Corps refused to begin construction under P.L. 100–581 until BIA agreed to a transfer process for when the construction was completed, while the BIA refused to agree to a transfer process until Corps provided O&M funding.

This impasse between the two agencies led to a meeting between the agencies and the tribes in September 1994. Both agencies were represented by key staff at the ASA level. The agencies agreed to work out a solution to the O&M issue and in 1995 the Corps and BIA agreed to an interagency MOU for the Transfer, Operation, Maintenance, Repair and Rehabilitation of the Columbia River Treaty Fishing Access Sites (1995 MOU). The 1995 MOU sets forth procedures for effectuating the transfer of facilities, lands, and for provision of operations and maintenance funding. The intent of the plan was for the Corps to provide a lump sum of monies appropriated to it for each set of sites to be built and then transfer those monies to the BIA upon completion of construction. The amount of money needed was calculated under a capitalized cost basis, the assumption being that the BIA would invest the lump sum in an interest bearing account and thus have steady funding to maintain the sites for five decades. An amendment to P.L. 100–581 (P.L. 104–109, Section 15, February 1996) provided the authority to transfer funds and property between the Corps and BIA.

In a February 10, 1998 memorandum, the Department of the Interior Solicitor's Office determined that BIA could enter into a contract under P.L. 93–638 with a tribal organization to assume certain BIA responsibilities for the sites constructed or rehabilitated pursuant to P.L. 100–581, including fund investment and administration, provided all four tribes named in that statute pass resolutions authorizing the tribal organization to enter such a contract. Eventually, after each tribe passed resolutions authorizing CRITFC to be the contractor, the CRITFC and the BIA entered into a 638 contract in 2003.

The 1995 MOU did not pan out as intended as the BIA lacked authority to invest and generate interest earnings on the Corps-provided O&M funds. In addition, the original capital account for O&M Fund for the sites assumed that funds could be invested in federal securities at the then prevailing interest rate of approximately 5 percent and that this investment scenario would provide a stream of revenues to cover annual O&M costs. These interest rate assumptions, which over a 30-year retrospective period appeared reasonably safe, did not hold true. Effective federal interest rates dropped below 2 percent in 2002 and later collapsed in 2008 and have remained well below 1 percent since 2009. In addition, BIA expended principal from the capital account between 1998 and 2003 to cover annual O&M costs. By the time CRITFC assumed 638 contract responsibilities in 2004, BIA's expenditure of the principal and fallen federal interest rates, had diminished the time horizon of the useful life of the initial capitalization.

CRITFC assumed O&M responsibilities for the sites on January 1, 2004. The Commission's objectives for O&M program are: (1) Invest the principal and earnings to maximize the time horizon over which the O&M can be provided for the sites; (2) Perform the O&M for the sites in a cost effective manner that also ensures they

are maintained in good condition; and (3) Provide for tribal member employment. The program employs seven CRITFC tribal members (Six fulltime) who conduct the operations and maintenance of the sites pursuant to approved annual budgets. The investment program is managed to maximize the time horizon for the funds provided, but given higher than anticipated levels of use and costs, current funding levels, lower than anticipated interest rates on federal securities, and financial constraints, staff projects the funds to be depleted between 2022–2023 which is approximately 20 years earlier than planned.

CRITFC is working on options to extend the time horizon for the O&M funding. These options include the BIA placing the Treaty Fishing Access Sites on the Indian Affairs Facilities Management System/MAXIMO (IAFMA to provide access to annual federal facilities funding for these sites (the five original in-lieu sites are already on the BIA's FMIS)). Another option is to supplement the O&M account with annual BIA appropriations. This would involve developing a BIA program and account for In-lieu and TFAS O&M funding. Both of these actions would be covered by the terms of CRITFC's existing Self-Determination Act Agreement for O&M. See Section (b)(3)(B)(v) and (vi).

#### **An Assessment of needs**

The 31 In-Lieu and Treaty Fishing Access Sites are highly used, often exceeding their capacities and compounded by extended seasonal and year-round occupancy. The sites were designed in the early 1990s based on estimated use during the then existing commercial gill net seasons. In the early 1990s the primary commercial season was the fall gill net season, which ran for four to six weeks between September and October. Over the past twenty years, the salmon runs started on a road to recovery which has led to increases of salmon abundance in Zone 6 of the Columbia River and to increases in the numbers and durations of the commercial gill net seasons when Columbia River treaty tribal members can exercise their right to harvest salmon. The levels of use at the In-lieu and TFAS have increased accordingly and currently many sites are occupied and used for 18 to 20 weeks of the 22-week period between mid-May and mid-October each year.

The increase in usage duration, 300 percent to 500 percent over initial estimates, is also tied to a similar increase in usage population, 300 percent to 470 percent, on most of the sites between mid-May through mid-October. The increase in duration, population, and use of the sites has naturally caused an increase in utility costs, i.e. water, sewer, electricity and garbage. O&M labor costs have also increased over the course of the 13 years that CRITFC has had the BIA 638 Self-Determination Act contract, not only because of the increased use but five TFAS were added since 2003, increasing the original number of sites from 26 to the 31 we have today.

The increase in duration and population has led to eight out of twelve In-lieu and TFAS that have wells on them being identified by the Indian Health Service as Public Water Systems. These sites are: North Bonneville, Stanley Rock, Dallesport, Celilo, Maryhill, Pasture Point, and Roosevelt TFAS, and Cooks Landing In-lieu site.

Site evaluations conducted in 2016 by CRITFC and the Yakama Nation found 17 of the 31 sites with distressed conditions and the remaining 14 sites with specific unmet needs. These evaluations were based on several criteria including safety, health, sanitation, and existing utilities. Among the most common needs are water based; for example, wash stations, showers, and drinking water systems. There are multiple instances of need for additional restrooms and fire suppression infrastructure. Wastewater disposal and maintenance and garbage collection are also continuing concerns. Four of the five original in-lieu sites were constructed without regards to washing dishes or anticipating occupancy for more than a few days at a time.

Major expenses and incidents that bear on the continued increase costs of maintaining the In-lieu and TFAS are:

- Number of sites available;
- Weeks of commercial gillnet seasons;
- Population using the sites;
- Periodic major clean-ups;
- Fuel costs, utility costs; and
- Other relevant increases or actions—SDWA Public Water System, Acts of vandalism.

We would be pleased to share our analysis with the Committee upon your request.

### Law Enforcement Issues

While not directly addressed by S. 3222, public safety provided by a fully equipped law enforcement detail are needed at the 31 sites and especially so for the off-reservation Columbia River corridor where the tribes conduct significant fisheries on a nearly year-round basis. Over the years, there have been numerous jurisdictional issues relative to criminal and civil law enforcement by tribes, BIA, Corps of Engineers, and state and local departments. Questions of where tribal, state, and federal jurisdictions begin, end, or are concurrent are complicated and unsettled judicially and politically.

In 1997, the Nez Perce, Umatilla, Warm Springs and Yakama tribes passed resolutions authorizing and supporting the Columbia River Inter-Tribal Fish Commission to contract with the BIA under P.L. 93-638 for the law enforcement services at the sites. The Commission's law enforcement department, Columbia River Inter-Tribal Fisheries Enforcement, has had a 638 contract with the BIA since the early 1980s to provide fisheries enforcement services in Zone 6 for the four Columbia River treaty tribes. The Commission's 638 contract submission, which included a scope of work based on a 1990 BIA proposal and would have provided 24/7 law enforcement coverage at the six sites on line at the time, was declined by the BIA due to lack of funding. Several subsequent attempts were similarly declined. Still, Columbia River Inter-Tribal Fisheries Enforcement officers continued to respond to calls but without dedicated contractual support from BIA could only address the most serious problems.

In the early 2000s BIA assigned one or two uniformed officers to the Columbia River sites. Their presence was scarce, no one knew how to contact the officer(s) or BIA dispatch, the officers had little or no knowledge of the tribal fishing practices or treaty case law and little or no coordination with Columbia River Inter-Tribal Fisheries Enforcement. Tribal members knew how to contact Columbia River Inter-Tribal Fisheries Enforcement dispatch and had rapport with Columbia River Inter-Tribal Fisheries Enforcement officers. Tribal members and leadership became increasingly dissatisfied with the BIA enforcement services, or lack thereof. As the fishing access sites were developed and fish runs improved, the number of tribal fishers using the sites increased and site usage throughout the year increased. Consequently, law enforcement problems and calls increased. These increases, compounded by the limited and ineffective policing by BIA, added to the pressure on the capacity of CRITFC law enforcement.

In September 2010, CRITFC submitted to the BIA another proposal to enter into a contract under Title I of the Indian Self-Determination and Education Assistance Act, P.L. 93-638 as amended, to assume BIA law enforcement responsibilities and associated funding for law enforcement in the area of the Columbia River, including law enforcement responsibilities for the sites named in P.L. 100-581 and P.L. 79-14. This proposal was again supported by tribal resolutions and was finalized in 2011.

In addition to law enforcement responsibilities, our officers are also tasked with search and rescue duties. These incidents put extreme pressures on staffing and resources when operations extend over many days. Often when tragedies in the treaty fishery occur, families establish vigil camps that are occupied until the missing individual is recovered. This requires a constant security presence. At this point, CRITFC would have major challenges in conducting search and rescue operation and camp security at the same time.

Currently, capacity allows for response to calls for service (reactive policing). There is very little capacity in terms of implementing problem-oriented policing and community-oriented policing (proactive prevention) strategies, at least in any comprehensive manner. CRITFC is specifically concerned about the crime types of violence, substance abuse, child welfare, and property crimes. In order to fully achieve the capacity of a modern policing service at the In-lieu and Treaty Fishing Access Sites, the annual funding need is approximately \$942,000 (not including indirect costs).

Our immediate priority is to add two Patrol officers, one Sergeant, one Investigator and one Dispatcher. Full funding for this Enforcement need is \$943,000 which would support a total of four officers, one sergeant, an investigator and a dispatcher. I respectfully say again, S. 3222 does not explicitly address law enforcement but we wish to identify this critically important unmet need because of its direct relationship to public safety at the sites.

*In summary*, through the combined efforts of the four Columbia River Treaty Tribes, supported by a staff of experts, we are committed to assisting our tribes and tribal members to exercise fully their treaty reserved rights to fish in all usual and accustomed places. We support S. 3222, the *Columbia River In-Lieu and Treaty*

*Fishing Access Sites Improvement Act* as means to ensure the treaty fishing sites are safe and sanitary.

The CHAIRMAN. Thank you. Thank you all for your testimony.

Just a couple of questions I wanted to start with.

Chairman Clarke, the land currently owned in fee by the Tribe that will now be held in trust as a result of this legislation, will that be used for tribal gaming in the future.

Mr. CLARKE. No, absolutely not.

The CHAIRMAN. Thank you.

Mr. Roberts, as you seem to acknowledge in your written testimony under S. 2636, the Department might be forced to acquire contaminated properties. The responsibilities and litigation that may flow from this could be costly. Are there other unintended consequences that you can see that might occur?

Mr. ROBERTS. I think that is the primary concern of the bill, is if there was an environmentally contaminated piece of property. Those types of applications are few and far between; I don't think we receive very many of those. I don't think Tribes are necessarily purchasing those properties, but that is one thing that, as a technical matter, we'd like to work with the Committee on.

The CHAIRMAN. Thanks.

I am going to defer the rest of my questions and turn the time over to Senator Franken.

Senator Franken, I am going to go and vote and then return, so feel free to expand on any questions you might have.

Senator FRANKEN. Kill time?

The CHAIRMAN. Well, inquire of the witnesses of all your curiosities.

Senator FRANKEN. Okay. All right.

[Laughter.]

Senator FRANKEN. Kill time. No.

Well, let's talk about Carcieri, Assistant Secretary. By the way, I went to the groundbreaking on the Bug School, Bug-O-Nay-Ge-Shig School and I want to talk to you about a matter regarding that privately.

Mr. ROBERTS. Okay.

Senator FRANKEN. It is good news.

Mr. ROBERTS. Great.

Senator FRANKEN. Under *Carcieri*, the BIA now has to verify that a Tribe was under Federal jurisdiction in 1934 as part of the land into trust acquisition process. Carcieri created a lot of uncertainty for Tribes partitioning to the place in the trust, and this is a problem for all Tribes, regardless of when they were federally-recognized, because it further complicates and delays the trust acquisition process.

Mr. Assistant Secretary, if all federally-recognized tribes were eligible to have land taken into trust, is it fair to say that that would simplify the trust acquisition process for both BIA and the Tribes?

Mr. ROBERTS. Yes, it absolutely would. It would simplify the process and it would save valuable resources not only for Tribes in sort of providing all of this information, and provide information on a Carcieri analysis, but it would also save the Department valuable resources in being able to turn to other things that are important to Indian Country.

Senator FRANKEN. Thank you. As you know, State and local governments have concerns about tribal land acquisitions through land into trust process. The State and local governments are worried about losing taxable land. Is the BIA or the Interior Department conducting outreach to State and local governments on the importance for restoring tribal lands?

Mr. ROBERTS. Thank you, Senator. Yes, we do. I meet fairly often with counties on fee-to-trust acquisitions, but we have also been working with the National Association of Counties, so the director of the Bureau of Indian Affairs, Mike Black, spoke at their conference earlier this year in terms of the fee-to-trust process. So that type of dialogue is very important.

I will say that we have acted on over 2,000 applications during the course of this Administration. Very few of those actually get challenged or litigated. So we have acted on over 2,000 that we have actually taken into trust that are not subject to litigation, so, you know, while there are some decisions that we make that do get challenged, it is a small percentage of the overall application pool.

Senator FRANKEN. So you would say the outreach is working?

Mr. ROBERTS. Sure. We can always do more, and we invite that outreach, but I think it is working. I think it is working. We have had a lot of good conversations with some counties when they come in and want to meet with us on fee-to-trust issues and understand the process better, and we are grateful for the invitation from the National Association of Counties and we will certainly appear at forums like that more if invited.

Senator FRANKEN. Since I have you here and since I have unlimited time, I did go to the groundbreaking for the Bug-O-Nay-Ge-Shig School, and that is something we are very grateful to you for and to Secretary Jewell for the funds to be able to rebuild that school, but there are a whole bunch of schools in Indian Country that are not in good shape. What can you tell me about going forward in terms of being able to address that?

Mr. ROBERTS. Sure. So that overall we have a crisis in terms of the condition of BIE schools. We have over 60 schools across Indian Country that are in poor condition, so while we were very thankful for Congress in terms of the appropriations to fix and build new schools like the Bug-O-Nay-Ge-Shig School, there are 60 other schools out there that are in similar circumstance and that need to be addressed. They need to be addressed in a time period where we don't have Native kids going through their whole schooling in the same school. So it is a crisis and we need to address it through improved funding and looking at different ways of how we can make better use of the funds that Congress provides us.

Senator FRANKEN. What do you mean by that? Give me an example.

Mr. ROBERTS. Sure. So an example is looking at we have done, brick and mortar construction historically, and looking at new ways to see if we can do some offsite construction that is more timely, less expensive, but delivers results and provides a longevity for the school of 50-plus years.

Senator FRANKEN. And that is what you are doing?

Mr. ROBERTS. That is what we are looking at. With the Bug School, exactly.



Senator FRANKEN. That is what we are doing with the Bug-O-Nay-Ge-Shig School.

Mr. ROBERTS. Yes.

Senator FRANKEN. My interest is in Senator Tester's bill. Does anybody here have some more comment on that?

Mr. ALLEN. Yes. Senator, again, my name is Ron Allen. I am Chairman for the Jamestown S'Kallam Tribe in Washington State and representing the National Congress of American Indians.

Regarding one of your points that you just mentioned with Secretary Roberts is the Tribes now become economic engines in their communities, so when we take land into trust, one of our agendas is to help provide better certainty and confidence about how we develop our reservation for the infrastructure and so forth to help us develop our economies. Because Congress can never fund the needs we have, we need to generate stronger economies, and we have.

Without a doubt, you see the casino industry in many sectors of Indian Country, so all those jobs, a significant portion of them, are non-Indians and they don't live on the reservation; they live off the reservation and they generate a tax base for those counties and States because of the homes they buy and things that they buy as employees of the Tribe.

In many of these communities we are the biggest employer. So when we take land into trust, that small amount of revenue that the county might lose for a land base is being returned tenfold simply by the economies that we enhance and our governmental activities which we employ, Indians and non-Indians alike. So it makes a significant difference.

And what is happening now over the last 20 years particularly, the governmental infrastructure of Tribes has gotten far more sophisticated with regard to land use and land management. So when we collaborate with counties with regard to land uses, it is easier for us to coordinate what they like to see used in lands in their area versus what we would use those lands for in terms of housing or economic development or for other kinds of infrastructure needs such as health clinics and schools, as you mentioned earlier. All those issues are important to our communities and we are making a difference.

So they benefit from us by creating all these jobs and creating employment and dropping that unemployment factor down as well, and helping us become self-reliant governments.

Senator FRANKEN. Certainly, housing is something that we have talked a lot about in this Committee and something that I think is absolutely crucial. We see so many situations in which there are housing shortages. Families end up living with other families and sometimes exposing young children to dysfunction that causes trauma. Housing is just one of the many pieces of the equation.

Senator Tester, the Co-Chairman has returned. I was basically talking up your bill, is what I was doing.

Senator TESTER. Somebody needs to do that, Al. Thank you.

[Laughter.]

Senator FRANKEN. Well, I'm not quite sure what the objections are. Where I did hear any objections, it seemed to be from Senators who are willing to work with you to make any fixes that need to be made.

Senator TESTER. [Presiding.] Well, Senator Franken, as you well know, part of the sausage-making around here on bills is this hearing and then figuring out common ground, figuring out where you slice the pie to make sure that everybody can win. I look forward to working with the Chairman and anybody on both sides, and our Native American friends, to make sure that when we get done we have something that actually makes it better, because I really do think that the issues that revolve around land going into trust are overcomplicated right now, and we can do better.

Senator FRANKEN. Well, the Chairman has left to vote.

Senator TESTER. Yes. So it's my turn?

Senator FRANKEN. Well, you are ranking right now.

Senator TESTER. Okay, good.

Senator FRANKEN. You can decide.

Senator TESTER. All right. We will carry on, Al.

Senator FRANKEN. Okay.

Senator TESTER. Thank you very much.

And we will just kind of go on the same line of checkerboarding in jurisdictions, and I am going to start with you, Larry. I don't know that I ever heard the term fractionalization as it applied to land until I got on this Committee. It is a complicated issue. I don't think any of us fully understand the impacts. Hopefully, you do, Larry, and hopefully there are others that do. But could you explain specifically what the problems are with checkerboarding and fractionalization, and why it undermines a government's ability to provide services to their citizens?

Mr. ROBERTS. Thank you, Senator. The easy answer is that there is no clarity or certainty, so you have tribal citizens and non-citizens living within an Indian reservation and no one is quite sure what rules apply because it depends on whether they are a tribal member and whether they are on fee land or trust land.

So if you have law enforcement responding to a situation, for example, they need to know, under the current rubric, whether they are dealing with tribal members or non-members and where the parcel is located. So it is something that Congress, when it enacted the IRA and stopped the alienation of Indian lands, they should have also done something like your bill, because it is literally restoring tribal homelands within existing reservation boundaries.

Senator TESTER. Okay. The good senator from Oklahoma brought up the fact that Oklahoma is a little different because it sounded like some Tribes that own parts of the same parcel of land. I don't know Oklahoma; you do. Are there any reservations like in Oklahoma or others that pose specific problems that this bill could address?

Mr. ROBERTS. So what we would look to for Tribes in Oklahoma, let's say, where a number of Tribes share ownership in a trust parcel, or we take land into trust for multiple Tribes, usually there is specific legislation for that Tribe or Tribes governing that.

Senator TESTER. Right.

Mr. ROBERTS. I don't see your bill as changing that; we would still follow that specific legislation. So if, for example, you know, legislation provided that if a Tribe purchased property within the reservation with its own funds but it is to be jointly governed by all three Tribes on the reservation, we would follow that specific

congressional directive, but we would take the land into trust for those Tribes. So it would be a mandatory acquisition; we wouldn't be changing the framework of specific legislation with regard to those particular Tribes.

Senator TESTER. Got you. Okay. Today we heard that there is a backlog in applications in front of the Department. Just to flush that out a little bit, how many on-reservation applications are pending right now?

Mr. ROBERTS. So, overall, we have just shy of 1,200 applications pending across Indian Country, both on-reservation and off-reservation. Roughly 950 of those are on-reservation, so the vast majority of those just under 1,200 are on-reservation. And when you put it in context of an Administration that has prioritized restoring tribal homelands over the last eight years, we have acted on 2,200 applications, and that is with this Administration prioritizing it. So with 1,200 hanging out there in the balance, you know, you are looking at, you know, years to clear that.

One other point on this is just even the simplest application, even the application that is, let's say, no change in use for agriculture, nobody cares about it, right now, under our current process, it takes about a year to get through.

Senator TESTER. Okay. As you know, Larry, and probably the whole panel does, I come from Montana. Those are large land-based Tribes up there. I think that the checkerboard fractionization issue is a huge issue for those large land-based Tribes. When my friend, Chairman of the Crow Reservation, Carl Van, was alive and I had just gotten into this job, he told me, you give me the tools that I need to work with and then get out of the road and let me go.

Two questions. First of all, do you see this as a tool that would help Tribes with their self-determination, with their sovereignty, and with their ability to serve their citizens?

Mr. ROBERTS. Absolutely.

Senator TESTER. And the second issue is, and this is an education from me since I come from a State with large land-based Tribes, would it benefit the smaller reservations, or do they not have to deal with these issues?

Mr. ROBERTS. No, there are Tribes with small reservations that have these same issues, and I guess the one thing about your bill and the one thing about our current regulations is that we treat as on-reservation acquisitions those lands that are contiguous to existing reservation boundaries. So for those Tribes that have, say, a small reservation and they seek to have land placed in a trust that is contiguous to their existing reservation, we treat that as on-reservation now.

Senator TESTER. Okay.

Just one question for Dr. Clarke, since the Chairman is back. You mentioned that the Tribe is dependent on groundwater resources, limited groundwater resources. Could you explain how this water settlement is going to improve your Tribe's ability to better utilize water resources?

Mr. CLARKE. Well, currently, at this time, we do not have the water to build homes at Peach Springs. In Peach Springs alone, I talked to the housing director just recently and I asked him how

many homes can we build right now, and he said currently we are at zero because we do not have the water at Peach Springs.

In doing so, taking the water from the Colorado River up to Peach Springs and on out to Grand Canyon West, that will help in building homes, building economy, building jobs, and looking at the future of the Hualapai Tribe. And the reasons all behind that is because we do not have the water, the water infrastructure. Down in the Truxton Aquifer, that is depleting as we speak today, and every year that we utilize that water in Truxton Aquifer, the water levels are going down. So that would help us.

Senator TESTER. You been able to map how quickly they have been dropping?

Mr. CLARKE. Pardon me?

Senator TESTER. You been able to map how quickly those water levels have been dropping?

Mr. CLARKE. Currently, I believe there have been studies happening there. There have been many studies on other groundwater that, it is showing that we do not have that sufficient amount.

Senator TESTER. Got you.

One last question. I lied.

Ron Allen, it goes back to my land into trust bill. All acquisitions tend to be grouped together, whether the parcels are located within the reservations or outside the reservation borders. I think they get an undeserved rap, but I want to know from your perspective whether on-reservation acquisitions are typically controversial.

Mr. ALLEN. From my perspective, no, they are not controversial. If the Tribe acquires the property within the reservation, for the most part, citizens who live inside a reservation border know about the Tribe's jurisdiction and authority. If the Tribe takes over a property, whether it is 100 acres or 300 acres, whatever it is, then it helps clean up and clarify the jurisdiction.

So it really is in the interest of the local governments because of the clarity of the jurisdiction with regard to the tribal reservation, and it helps the Tribe in terms of providing better infrastructure. I don't care whether it is roads or whether it is water, wastewater, telecommunication systems, so that we can serve the whole reservation in a more effective way.

So it serves the local communities as much as it does the tribal community from all aspects. As I mentioned to Senator Franken, we need homes, we need economic development. We need to be able to build better schools, better health clinics, better hospitals, and we need to have the infrastructure to accomplish that. By acquiring those properties and including a consistency for the whole reservation, it improves that situation for the Tribe and the surrounding community. So we don't think it is controversial.

And one other point is our governmental infrastructure is much stronger today than it was 20 years ago, so our land use management is much more sophisticated; building codes and health codes and so forth. So it just improves our relationship and people's confidence about the activity that goes on within a reservation border.

Senator TESTER. Okay, thank you.

Thank you all for your testimony, and I will apologize only that it is not really our fault that the hearing got held during some votes and it made this a little bit dysfunctional. But I think the

Chairman did a great job of keeping the ball rolling. So thank you all and thank you, Mr. Chairman.

The CHAIRMAN. [Presiding.] Well, thank you. Thanks for the questions. I have just a couple other questions.

Mr. Roberts, your written testimony acknowledges that S. 3216, that that bill would promote self-determination and self-governance and support positive collaboration among Tribes and the Federal Government. It would also clarify what I think is a muddled jurisdictional system. Your written testimony suggests that, if enacted, it could have funding implications as current funding streams to existing Tribes can't be reduced in order to make funds available for the Tribe.

Could you talk about what cost you anticipate would be associated if we enact S. 3216?

Mr. ROBERTS. So thank you for the question, Chairman. I believe that if the bill for repealing the Iowa Act, that is the bill you are asking about, Senator?

The CHAIRMAN. Yes. And I am going to ask Mr. Jefferson a follow-up question.

Mr. ROBERTS. Yes, I think that there would be. We do identify that there would be a cost. I think it would be relatively small. I don't have that information today, but it is something that I would be happy to provide the Committee.

The CHAIRMAN. So, Mr. Jefferson, you explain in your written that the Sac and Fox Tribe operates and maintains a fully functional criminal justice system, that the Tribe has its own robust legal code, a police department, a court system, a full-time prosecutor and a probation officer, correct?

Mr. JEFFERSON. Yes.

The CHAIRMAN. And that the Department of the Interior supports S. 3216, but said there may be associated funding implications. So if S. 3216 is enacted, does the Tribe plan to maintain operations of its criminal justice system, or would you then be reliant, instead, on the Bureau of Indian Affairs to operate the criminal justice system? Because it matters in terms of the cost.

Mr. JEFFERSON. We plan on continuing to fund it ourselves and keep it the way it is now.

The CHAIRMAN. Great. Okay, thank you.

And then, Mr. Roberts, one last question on the Reservation Land Consolidation Act. That would eliminate several requirements in the review process that currently exists for both on-reservation discretionary and mandatory trust acquisitions. These processes are truncated in such a manner that they may prevent Tribes and all other stakeholders from commenting on and perhaps even learning about an acquisition until the final decision has been made, and I know we all want to avoid that. The secretary could also lack the ability to consider other interests, including other tribal interests over the land.

So has the Administration kind of taken a look at that in terms of this could potentially, and I know we are trying to avoid it, potentially pit one Tribe against another, and could that undermine some tribal rights?

Mr. ROBERTS. Thank you, Chairman, for the question. So for on-reservation acquisitions under our current regulations, there are

very few, I am not aware of any instances that come to mind where one Tribe is challenging another Tribe's on-reservation acquisition itself, so I think it is very rare. In our regulations themselves for the Tribe whose reservation it is, if another Tribe were to seek land into trust in that primary Tribe's reservation, that Tribe whose reservation it is has to consent to that acquisition from an outside Tribe. So I don't think that that would change under the bill being considered today.

The CHAIRMAN. Well, thank you.

If there are no other questions, Senator Tester, I think that other members may who had to get called away to vote and to other obligations, they may submit follow-up written questions.

The hearing record is going to be open for two weeks. I appreciate all your patience in the give and take and back and forth to vote. I want to thank all of you for your time, your testimony.

The hearing is adjourned.

[Whereupon, at 3:48 p.m., the Committee was adjourned.]

## A P P E N D I X

### PREPARED STATEMENT OF HON. GARY BURKE, CHAIRMAN, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

On behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), thank you for allowing me to submit this statement of support for S. 3222, introduced by Senator Jeff Merkley.

Pursuant to the 1855 Treaty of Walla Walla, the Cayuse, Umatilla and Walla Walla tribes (now the CTUIR) ceded to the United States more than 6.4 million acres in what is now northeastern Oregon and southeastern Washington. Those cessions were made while the tribes retained the Umatilla Indian Reservation as a permanent homeland. The Treaty of 1855 further reserved CTUIR perpetual rights to fish, hunt, and gather traditional foods and medicines throughout the its traditional use lands, including along the Columbia River. These rights—particularly those to fish along the Columbia River—remain fundamental to our culture and subsistence.

Since time immemorial, our families have fished, hunted and gathered at all usual and accustomed places along the Columbia River. In the spring the tribes gathered along the Columbia River at places like Celilo Falls to fish for salmon and engage in a robust trade of goods with other tribes. They dried the salmon and stored it for later use. In late spring and early summer they traveled from the Columbia to usual and accustomed areas throughout our ceded territory to hunt and gather foods and medicines. In late summer they traveled to the upper mountains to hunt and gather in preparation for the winter months. In the fall the tribes would return to the lower valleys and along the Columbia River again to catch the fall salmon run. All would stay in winter camps in the low regions until spring when the whole cycle would start all over again.

In the mid-20th Century, however, the Federal Government constructed multiple dams along the river, inundating tribal fishing sites and villages. This impacted treaty-protected access to historic fishing grounds, tribal economies and displaced tribal fishing families that lived along the Columbia River.

In Public Law 100–581, Congress authorized the U.S. Army Corps of Engineers to rehabilitate the five existing In-Lieu sites and to acquire and construct new in-lieu treaty fishing access sites (“TFAS”) along the Columbia River to further the mitigation promised in the 1930s to the tribes for sites lost by construction of Columbia River dams and subsequent inundation by the river.

In 1995 an agreement was reached between the Corp and BIA that, among other things, provided that once the TFAS were completed they would be placed on the BIA inventory of federal lands, and be designated as eligible to receive O&M funds.

To date, the BIA has not placed these sites on the federal inventory and existing funding provided by the Corps is not sufficient to address basic maintenance needs at the sites. As a result, TFAS sites are dilapidated, unsafe and fail to meet basic sanitary standards.

S. 3222, introduced by Senator Merkley, would call upon the Bureau of Indian Affairs to assess the current sanitation and safety conditions at Bureau-owned facilities that were constructed to provide treaty tribes access to traditional fishing grounds. The bill recommends expenditures as necessary for actions that would improve sanitation and other infrastructure such as water and sewer for the sites.

The basic TFAS improvements called for in this legislation would be a welcome step toward fulfilling the Federal Government’s treaty obligations to Columbia River tribes. The Confederated Tribes of the Umatilla Indian Reservation strongly support S. 3222. We thank the Committee for holding today’s hearing on the bill, and recommend its timely passage.

PREPARED STATEMENT OF THEODORE C. COOKE, GENERAL MANAGER, CENTRAL  
ARIZONA PROJECT (CAP)

Chairman Barrasso, Vice Chairman Tester and members of the Committee, my name is Theodore C. Cooke, General Manager of the Central Arizona Project (CAP). I previously sent a letter dated September 8, 2016 to Chairman Barrasso and Vice-Chairman Tester indicating that S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016, has the unanimous support of the Board of Directors of the Central Arizona Water Conservation District (CAWCD).

This testimony addresses specific concerns raised by Acting Assistant Secretary of the Interior, Lawrence Roberts, in the Department's written testimony:

The settlement would be the first in Arizona that includes CAP water but does not use any portion of the CAP operating system for water deliveries to the Reservation. Despite lack of use of the system, S. 3300 would obligate the Tribe to pay the CAP fixed OM&R charges for all water deliveries. Under such an arrangement, water delivered to the Reservation would incur two OM&R costs—the fixed CAP OM&R charge and the Tribe's own Project OM&R costs. The Department does not support this 'double charge' for water deliveries.

#### **I. Unrelated Costs**

In our assessment, the Department of Interior's assertion of a "double charge" creates an incorrect linkage between the CAP Fixed OM&R charge, and costs incurred by the Tribe past the point of delivery. Virtually all recipients of CAP water incur additional costs associated with the use of CAP water, whether it is an irrigation district that must maintain lateral canals to receive CAP water, or municipalities that must treat the water before delivering it to their customers. The relevant question in this context is simpler: "Should the Tribe be required to pay CAP Fixed OM&R charges even though the supply is not delivered through the CAP system?" The answer to that question does not hinge in any way on the OM&R costs for the Tribe's delivery system.

#### **II. CAP Charges**

As background, delivery of CAP water to non-federal recipients is contingent upon the payment of three charges: (1) capital charges; (2) Pumping Energy Charges; and (3) Fixed OM&R Charges.

Capital charges that are collected by CAWCD are applied to repayment of the non-federal portion of the construction costs of the CAP. The federal portion of construction costs is non-reimbursable and is excluded from CAWCD's repayment obligation. Therefore, CAWCD does not collect capital charges from the Tribes, nor has CAWCD required the Hualapai pay capital charges in this settlement.

Pumping Energy Charges are collected to recover CAWCD's costs for the generation, acquisition, and transmission of the energy necessary to deliver CAP water each year. The Pumping Energy Charge is a variable cost of CAP water delivery that is dependent on a number of factors, such as total water delivered through the CAP system, the amount of energy CAWCD must purchase on the wholesale energy markets, and the cost of any purchased energy. CAWCD then collects Pumping Energy Charges based on the volume of water any entity receives through the CAP system. Pursuant to the settlement, the Tribe would pay Pumping Energy Charges only for CAP water delivered through the CAP system, but not for CAP water that is delivered through the Hualapai Tribe Water Delivery Project.

Fixed OM&R Charges are collected by CAWCD to recover the costs of operating the CAP. As the name indicates, these charges are based on costs that are incurred by CAWCD to provide for the operation, maintenance, and replacement of the CAP system, and they do not vary with the volume of water delivered. CAWCD is obligated to maintain the CAP system as set forth in its O&M Transfer Agreement with the United States (Contract No. 7-07-30-W0167, dated August 5, 1987). The calculation of the Fixed OM&R Charge is defined in the 1988 Master Repayment Contract and the November 21, 2007 Repayment Stipulation between the United States and CAWCD. Pursuant to the terms of individual water delivery contracts, all recipients of CAP water are obligated to pay the Fixed OM&R Charge.

#### **III. Project Water**

The Repayment Stipulation states that Fixed OM&R Charges are applied to each acre-foot of Project Water. Project Water is defined to include all Colorado River water to which Arizona is entitled under *Arizona v California*, less the volume used by Arizona Main Stream users with senior or equal priority water right to the CAP.

There is no dispute that the Colorado River water used for the settlement of the Hualapai Tribe's water rights claims is part of the Project Water supply available



to CAP. Specifically, the supply is part of the 650,724 acre-foot volume under long-term contract to Arizona Indian tribes or available to the Secretary for allocation to Arizona Indian Tribes pursuant to the landmark Arizona Water Rights Settlement of 2004. Among other things, that settlement helped to resolve disputes between the United States and CAWCD over the allocation of CAP water to federal and non-federal interests (see P.L. 108–451, § 104(c)(1)(A)). CAWCD's right to Project Water is not dependent on the use of the CAP system *per se*, so if CAP water is used for this settlement or for the settlement of the water rights claims of any other Arizona Indian tribe, that water is subject to the payment of Fixed OM&R Charges.

#### IV. Hualapai Acceptance of CAP Fixed OM&R Charge

Perhaps most important to the resolution of this issue is that, as Hualapai Chairman Clarke makes clear in his supplemental testimony, the Hualapai Tribe Water Rights Settlement Act of 2016 is a “negotiated package with reciprocal concessions.” Since the earliest days of these negotiations, CAWCD has conditioned its acceptance of a settlement upon the payment of Fixed OM&R by the Tribe regardless of the water delivery system used to deliver that CAP water. While the United States might prefer to exempt the Tribe from paying fees that every other user of the CAP system must and is contractually obligated to pay, the Tribe has expressed understanding for this necessity and agreed to do so since the earliest days of these negotiations.

#### V. Impact of Non-Payment

Fixed OM&R costs are, as the name implies, fixed costs that must be paid by someone. If the CAP water allocated and delivered to the Tribe did not incur Fixed OM&R Charges, those charges would increase for all other CAP users.

Among the users affected by these increased costs are the other Arizona Indian Tribes receiving CAP water. Approximately half of the long-term contracts for CAP water are held by tribes and thus half of the increase in Fixed OM&R Charges would be borne by those tribes. The other half of that increase would be borne by non-federal recipients. Neither the tribes, to which the United States holds a trust responsibility, nor the non-federal recipients are parties to this settlement nor have any of those parties been consulted on the increases to Fixed OM&R that would be a consequence if the United States' position were adopted.

We appreciate the opportunity to submit this supplement to the Committee.

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PREPARED STATEMENT OF DAVID ROBERTS, ASSOCIATE GENERAL MANAGER, WATER RESOURCES, SALT RIVER PROJECT (SRP)

Dear Chairman Barrasso and Vice Chairman Tester:

My name is David Roberts and I am the Associate General Manager of Water Resources at the Salt River Project (SRP), a large multi-purpose federal reclamation project embracing the Phoenix, Arizona metropolitan area. I am writing to express SRP's support for S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016, which authorizes the Hualapai Tribe Water Rights Settlement Agreement among the Hualapai Tribe, the United States and neighboring Arizona water users, including SRP.

SRP has a history of negotiating and settling Indian water rights disputes in Arizona including five settlements that have been approved by Congress. Over the past four decades, SRP has worked with numerous tribes and stakeholders to resolve Indian water rights disputes in a manner that benefits both Indian communities and their non-Indian neighbors. Most important among the benefits is water supply certainty, which is a fundamental outcome of any water rights settlement.

SRP is comprised of the Salt River Valley Water Users' Association (“Association”) and the Salt River Project Agricultural Improvement and Power District (“District”). Under contract with the Federal Government, the Association, a private corporation authorized under the laws of the Territory of Arizona, and the District, a political subdivision of the State of Arizona, provide water from the Salt and Verde Rivers to approximately 250,000 acres of land in the greater Phoenix area. Over the past century, most of these lands have been converted from agricultural to urban uses and now comprise the core of metropolitan Phoenix.

The Association was organized in 1903 by landowners in the Salt River Valley to contract with the Federal Government for the building of Theodore Roosevelt Dam, located some 80 miles northeast of Phoenix, and other components of the Salt River Federal Reclamation Project. SRP was the first multipurpose project approved under the Reclamation Act of 1902. In exchange for pledging their land as collateral for the federal loans to construct Roosevelt Dam, which loans have long since been fully

repaid, landowners in the Salt River Valley received the right to water stored behind the dam.

In 1905, in connection with the formation of the Association, a lawsuit entitled *Hurley v. Abbott, et al.*, was filed in the District Court of the Territory of Arizona. The purpose of this lawsuit was to determine the priority and ownership of water rights in the Salt River Valley and to provide for their orderly administration. The decree entered by Judge Edward Kent in 1910 adjudicated those water rights and, in addition, paved the way for the construction of additional water storage reservoirs by SRP on the Salt and Verde Rivers in Central Arizona.

Today, SRP operates the Project works, which include, among other things, six dams and reservoirs on the Salt and Verde rivers in central Arizona, and one dam and reservoir on East Clear Creek in northern Arizona. Water is stored by SRP in these reservoirs for subsequent delivery to municipal, industrial and agricultural water rights and uses. The watersheds for these dams include part of several national forests. SRP's delivery system in the metropolitan Phoenix area encompasses 1,300 miles of canals, laterals, ditches and pipelines serving cities, Indian communities, irrigation districts, homes and agricultural enterprises. Additionally, SRP operates over 250 deep well pumps to supplement surface water supplies available to the Phoenix area during times of drought.

SRP holds the rights to water stored in the seven Project reservoirs, and to the downstream uses they supply, pursuant to the state law doctrine of prior appropriation, as well as federal law. Much of the water used in the Phoenix metropolitan area is supplied by these reservoirs. SRP also operates one of the nation's largest public power systems, providing electrical power to more than 1,000,000 customers in the Phoenix area, and in certain rural areas of central Arizona.

The Hualapai Tribe's Reservation is located upgradient from and adjacent to the Colorado River, in northwestern Arizona. A portion of the Reservation is located in the extreme upper end of the Verde River watershed, upstream from SRP's Verde River water rights. The United States, acting on behalf of the Tribe, has asserted claims in the pending Gila River Adjudication, to 14,495 acre-feet of water annually from the Verde River watershed.

Over the past four years, SRP and other interested stakeholders have engaged in water rights settlement negotiations with the Hualapai Tribe. With the exception of an exhibit agreement among the United States and Freeport Minerals Corporation (FMC), which we understand is still in the process of being negotiated, the terms of the Hualapai Tribe Water Rights Settlement Agreement have been agreed to and finalized. SRP supports the portions of the settlement agreement that have been completed and urges the Senate Indian Affairs Committee to vote in favor of enactment of S. 3300.

The Hualapai Tribe Water Rights Settlement Agreement would, among other matters, permanently resolve the claims of the Tribe and the United States on its behalf to the Verde River watershed, and would do so without impacting SRP's downstream Verde River water rights. The settlement agreement also resolves the claimed rights of the Tribe to the Colorado River, as well as the Bill Williams River, tributaries in the Bill Williams River watershed, and groundwater for the Reservation and tribal trust lands. Finally, the settlement resolves claims by the Tribe to water rights for certain lands held in fee by the Tribe.

Because the Hualapai Tribe Water Rights Settlement Agreement would achieve the important objective of providing certainty to neighboring Arizona water users regarding the extent of the Tribe's water rights, and because we believe its terms are fair and equitable to the Tribe and the other settling parties, SRP supports S. 3300, which would authorize the Tribe, and the United States on its behalf, to enter into the settlement agreement. We appreciate the opportunity to present these views to the Senate Indian Affairs Committee.

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PREPARED STATEMENT OF THE STOCKBRIDGE-MUNSEE COMMUNITY, BAND OF  
MOHICAN INDIANS

### Introduction

On September 14, 2016, the Senate Committee on Indian Affairs held a legislative hearing on a number of bills, including S. 2636 (the "Reservation Land Consolidation Act of 2016"). As currently drafted, S. 2636 would amend the Indian Reorganization Act of 1934, 25 U.S.C. § 465 ("IRA") to provide that if a federally-recognized Indian tribe submitted an application to the Secretary of the Department of the Interior ("Secretary") to have tribally owned lands that are wholly located within that tribe's reservation taken into trust, the Secretary, subject only to Federal land acquisition title requirements applicable to federal acquisitions of land, must imme-

diately take such lands into trust. S. 2636 would also provide that “where there has been a final judicial determination that a reservation has been disestablished or diminished, the term ‘reservation’ means the area of land constituting the former reservation” of the tribe.

This bill is of critical importance to the Stockbridge-Munsee Community (the “Tribe”) and the Tribe strongly supports it. S. 2636 would finally fulfill the promises of the IRA and enable the Tribe to reacquire lost lands within its original reservation boundaries in a timely and cost effective manner. As explained below, in the 70-plus years since enactment of the IRA, the Tribe has reacquired in trust only a small fraction of its reservation lands pursuant to the IRA. The Tribe’s few trust land holdings are scattered throughout the reservation and as a result, the Tribe faces tremendous jurisdictional issues and challenges to its ability to provide governmental services to its members. Moreover, each trust acquisition is invariably challenged by local municipalities, and even though these claims are eventually dismissed, it is only after significant delays and costs to the Tribe. Requiring the Secretary to immediately acquire such onreservation lands into trust would allow the Tribe to finally reacquire its lands timely and efficiently, and would eliminate jurisdictional issues that continue to plague the Tribe.

The Tribe respectfully submits this written testimony for the record of the Senate Committee on Indian Affairs’ “Legislative Hearing to Receive Testimony on the Following Bills: S. 2636, S. 3216, S. 3222, S. 3300.” The Tribe’s testimony is limited to S. 2636.

## **Background**

### *IRA*

In response to the devastating effects of the General Allotment Act of 1887 which resulted in the loss of over 80 million acres of Indian lands, Congress enacted the IRA in 1934. Its clear objective and purpose was to reverse the allotment policy and to reacquire lands for tribes. Securing meaningful tribal land bases would allow tribes to provide permanent housing to their members, create opportunities for economic development and exercise selfdetermination. Unfortunately, despite the IRA’s important objectives, only a small percentage of Indian lands have been reacquired.

### *Tribe*

The Stockbridge-Munsee Community was originally located on its ancestral lands in and around the Hudson River Valley in New York. However, through a series of forced removals over the span of several decades, the Tribe was eventually relocated to Wisconsin in the 1820s.

The Tribe’s current reservation in Wisconsin was originally established pursuant to two 1856 treaties and consisted of two townships totaling more than 46,000 acres. After the reservation proved unsuitable for agriculture, Congress passed a series of acts in 1871 and 1906 to assist the Tribe in finding alternative lands. In spite of these acts, the Tribe remained on its reservation for 160 years and during this time, the United States treated all of these lands as the Tribe’s reservation for all purposes.

In 2004, the United States District Court for the Eastern District of Wisconsin ruled that the 1871 and 1906 Congressional Acts diminished and disestablished the Tribe’s reservation. The U.S. Court of Appeals for the Seventh Circuit affirmed that decision in 2009.

As a result, the Tribe’s existing reservation—once more than 46,000 acres—now consists of a mere 17,000 acres of trust land. Since 1937, the Secretary has placed only approximately 1,650 acres in trust for the Tribe pursuant to the IRA.<sup>1</sup> Expressed as a percentage, in the last nearly 70 years since the enactment of the IRA, the Tribe has reacquired in trust status less than four percent (4 percent) of its original reservation lands.

Clearly, the intent of the IRA has not been fully realized. As a result, the Tribe continues to experience jurisdictional challenges and unnecessary delays in its efforts to reacquire its lands pursuant to the IRA. We believe S. 2636 will resolve these issues and allow the Tribe and the Secretary to finally achieve the goals and objectives of the IRA.

<sup>1</sup> In 1972, pursuant to PL 92-480, Congress directed 13,077 acres of land within the Tribe’s original reservation to be placed into trust. Accordingly, despite the existence of the IRA for over 70 years and its strong policy to reacquire lost lands in trust status for tribes, over seventy-five percent (75 percent) of the Tribe’s current trust land holdings were acquired not through the IRA, but through this specific Congressional action.

*Current Fee-to-Trust Process and Problems*

The Tribe currently has twenty-seven fee-to-trust petitions for approximately 1,983 acres pending with the Department of the Interior. All of these petitions are for lands located within the Tribe's original reservation boundaries. Over the last two decades, the Tribe has spent millions of dollars to acquire its former lands. It currently owns 7,522 acres of fee land within the reservation and pays approximately \$200,000 in property taxes each year on such lands.

The last time the Secretary placed land into trust for the Tribe was in 2011. The Tribe filed the petition for approximately 404 acres in 2000—over a decade before it was taken into trust. The decade-long process was the result of the discretionary nature of the acquisition, the slow bureaucratic process at the Bureau of Indian Affairs, as well as appeals brought by the surrounding County of Shawano ("Shawano County" or "County"). Unfortunately, the untimeliness of this particular trust acquisition is not unique—in fact, it is the norm.

For many years, Shawano County has had a standing resolution to oppose all fee-to-trust petitions of the Tribe as well as decisions by the Secretary to take land into trust. Although the County has since withdrawn its resolution, it continues to challenge every favorable trust acquisition decision. Currently, there are two bundled applications under appeal with the Assistant Secretary—Indian Affairs. The first application has been pending for approximately nine years and the second has been pending for almost six and a half years. It is important to point out that despite the County's challenge to each discretionary trust acquisition decision, no favorable decision has been overturned.

Like virtually all other tribes, the Stockbridge-Munsee Community is in desperate need of additional trust land in order to facilitate housing, infrastructure and economic development. In order to simplify jurisdictional issues and avoid additional costs, the Tribe would prefer that all new housing for tribal members be located on trust lands. At present, the Tribe has at least 43 families on wait lists for housing and the Tribe has assigned all of its habitable trust lands to members; there are no unassigned lots available. Moreover, a portion of the Tribe's trust lands is not suitable for housing because of nitrate contamination. The Tribe's shortage of trust lands also adversely impacts community infrastructure and economic development efforts. The Tribe's secondary source of governmental income is forestry. As such, the Tribe is not in a position to clear forestry lands for housing because that would impact tribal budgets. Rather, the Tribe desires to increase its ability to provide governmental services by adding to its overall acreage of trust lands so more can be used for forestry. S. 2636 would provide the means to finally address these issues and as a result, improve the general welfare of the Tribe and its members.

The Tribe also believes that S. 2636 would be improved by clarifying that once contiguous or on-reservation land is taken into trust, it would automatically be deemed as part of the reservation. Under current policy and practice, the Secretary, in a separate action, must proclaim the lands as reservation lands. Although there is little to no impact on jurisdictional issues, an additional process and action by the Secretary allows for yet another legal challenge to the status of the land.

**Conclusion**

The Tribe strongly supports S. 2636. Mandating the Secretary to treat all contiguous and on-reservation fee-to-trust petitions as mandatory acquisitions would dramatically shorten the fee-to-trust process and result in fewer appeals and challenges to trust acquisition decisions because such actions would be mandatory and not discretionary. Coupled with language indicating that such newly acquired trust land would be deemed part of the Tribe's reservation, S. 2636 would also clarify the Tribe's jurisdiction over such lands.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
LARRY ROBERTS

*Question 1.* Please advise the Committee of all studies that any Interior Department agency has conducted of groundwater resources on the Hualapai Reservation since 1950, the result of each study and why the Department believes these studies establish the need for the two additional groundwater studies it now proposes to conduct.

Answer. Since 1950, the Department has conducted or partnered on the following groundwater studies in order to supplement the growing understanding of hydrology in and around the Hualapai Reservation:

Freethy, G. W. and Anderson, T. W., 1986, Predevelopment Hydrologic Conditions in the Alluvial Basins of Arizona and Adjacent Parts of California and

New Mexico: U.S Geological Survey Hydrologic Investigations Atlas HA-664, 3 plates, 1:500,000.

Twenter, F.R., 1962. Geology and promising areas for ground-water development in the Hualapai Indian Reservation, Arizona: U.S. Geological Survey, Water-Supply Paper 1576-A, scale 1:125000.

Watt, D., 2000. Groundwater Exploration Drilling and Well Development near Grand Canyon West, Hualapai Reservation, Arizona. U.S Department of the Interior, Bureau of Reclamation. Lower Colorado Region. Boulder City, Nevada. Unpublished

These previous reports relied on the evaluation of limited well and spring information and a limited geologic and structural framework of the reservation lands to identify and characterize groundwater in the Muav Limestone (the R-M Aquifer) and in alluvial, volcanic, and basin fill sediments (the Truxton and Westwater Aquifers). As a result, the published groundwater resource assessments of the reservation provide only general ranges of estimated groundwater discharge from reservation lands.<sup>1</sup> None of the reports give a high degree of certainty about the overall occurrence and movement of groundwater on reservation lands owing to limited understanding of the overall hydrogeologic framework.

In addition, many of the published reports recommended the need for additional studies to more completely characterize the occurrence and movement of groundwater resources underlying reservation lands. Two studies discussed the importance of a thorough understanding of complex geology and geologic structure by managers and drillers for the proper location of test and production wells. In fact, past attempts at drilling and development of new supply wells have met with limited success because of a poor understanding of the complex geology and geologic structure that controls the occurrence and movement of groundwater.

However, existing well and spring data indicate that substantial but variable groundwater resources occur on reservation lands. For this reason, the Department believes that conducting regional hydrogeologic assessments of the reservation's groundwater resources using state-of-the-art hydrogeologic tools will provide improved understanding of the geologic and hydrogeologic frameworks on reservation lands. We believe that this insight may lead to improved characterization of groundwater resources and potentially more successful groundwater development. The insight may also enable more effective water-management decisions now and in the future as groundwater demands on aquifer resources across Arizona increase with increasing development, population growth, and changing climate conditions.

*Question 2.* Please supply the Committee with the specific reports that cause the Department to believe the costs of constructing the pipeline will be higher than the \$134,500,000 authorized in S. 3300.

Answer. There are no finalized specific reports with respect to costs of the infrastructure project. The Department reviewed DOWL HKM's (DOWL) "Grand Canyon West Water Supply Study", December 2014, and recent addendum, June 2016, referred to as Appraisal Design Report (ADR) and found that the report underestimated certain costs, including costs associated with water treatment plants, storage tanks, number of storage tanks, pumping plants, intake and pretreatment facility, and pipelines. Additional costs related to design contingencies, construction contingency, and distributed non-contract costs were also determined to be underestimated, and the collective short-comings of the report informed the Department's conclusion that the cost estimate is substantially low. The Department continues to analyze the costs of constructing the pipeline, and looks forward to working with the Tribe, the Arizona delegation and this Committee to facilitate a consensus settlement agreement.

*Question 3.* Please enumerate the specific types of "substantial litigation on multiple fronts" the Department believes will result from the proposed infrastructure project.

Answer. The Department believes that because the project is located in part within the Grand Canyon National Park it is likely that environmental and conservation organizations will oppose the project, and such opposition may include litigation

<sup>1</sup>Three previous studies estimated groundwater storage of the greater Peach Springs watershed, which includes the Hualapai Reservation aquifer systems, to be about 1,000,000 to 10,000,000 acre-feet.

against the Department under the National Environmental Policy Act, the Endangered Species Act, as well as other federal statutes.

